

VOL. CXIV.

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No. 51

## Christmas Number

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## LEGACIES FOR ENDOWMENT

THOSE making or revising their Wills may like to consider benefiting some selected aspect of Church Army Social or Evangelistic work by the endowment of a particular activity—thus ensuring effective continuance down the years.

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1. Training of future Church Army Officers and Sisters.
2. Support of Church Army Officers and Sisters in poorest parishes.
3. Distressed Gentlewomen's Work.
4. Clergy Rest Houses.

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Financial Organising Secretary

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In recommending a bequest or donation to the RSPCA you may confidently assure your client that every penny given will be put to work in a noble cause. Please write for the free booklet "Kindness or Cruelty" to the Secretary, RSPCA, 105 Jermyn Street, London, S.W.1.

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## RSPCA

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GOSPORT (1942)

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Mrs. Bernard Currey, M.B.E.

All buildings were destroyed by enemy action, after which the Rests carried on in temporary premises. At Devonport permanent quarters in a building purchased and converted at a cost of £50,000 have just been taken up whilst at Portsmouth plans are well advanced to build a new Rest when permission can be obtained.

Funds are urgently needed to meet heavy reconstruction commitments and to enable the Trustees to continue and develop Miss Weston's work for the Spiritual, Moral and Physical Welfare of the ROYAL NAVY and other Services.

Gifts may be earmarked for either General or Reconstructive purposes.

Legacies are a most welcome help

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Contributions will be gratefully acknowledged. They should be sent to the Treasurer, Royal Sailors Rests, Buckingham Street, Portsmouth. Cheques, etc., should be crossed National Provincial Bank Ltd., Portsmouth.

## Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.)  
Box Number 1s. extra. Latest time for receipt—9 a.m. Wednesday.

### IN THE COUNTY OF NOTTINGHAM PETTY SESSIONAL BOROUGH AND DIVISION OF MANSFIELD

APPLICATIONS are invited for the position of Second Assistant in the office of the Clerk to the Justices at Mansfield. Applicants should have good experience of magisterial law and practice, and be able to keep accounts of fines and fees. They should also be competent shorthand writers.

The position is a full-time appointment and will be at a salary within that of Grade III of the National Joint Council Scale for local authorities (i.e., £450-£495 per annum).

The appointment, which may be determined by one month's notice on either side, will be subject to the Local Government Superannuation Acts, and the successful candidate will be required to pass a medical examination.

Applications, stating age, qualifications and experience, together with copies of not more than three recent testimonials, should be delivered to the Clerk to the Justices, 70, Nottingham Road, Mansfield (in envelope endorsed "Second Assistant") not later than January 6, 1951.

K. TWEEDALE MEABY,

Clerk of the Standing Joint Committee.  
December 9, 1950.

### COUNTY OF MIDDLESEX

Edmonton Petty Sessional Division

SOLICITOR as Senior Assistant to the Clerk to the Justices. Required March, 1951. Experience in justices' clerk's office desirable. Commencing salary £850 per annum, by annual increments of £50 to £1,000 per annum. Pensionable subject to medical fitness and prescribed conditions. Applications with copies of not more than three recent testimonials must reach the undersigned by January 6, 1951 (quoting H864 J.P.). Canvassing disqualifies.

C. W. RADCLIFFE,

Clerk to the Standing Joint Committee.  
Gulldhall, Westminster, S.W.1.

### CITY OF MANCHESTER

Appointment of Whole-Time Male Probation Officer

APPLICATIONS are invited for this appointment.

Applicants must not be less than 23 nor more than 40 years of age, except in the case of a serving whole-time probation officer.

The appointment will be subject to the Probation Rules, 1949, and the salary will be in accordance with such rules and subject to superannuation deductions.

The successful candidate may be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with copies of two recent testimonials, must reach the undersigned not later than Thursday, January 4, 1951.

WALTER LYON,

Secretary to the Probation Committee.  
City Magistrates' Court, Manchester, 1.

### COUNTY OF HERKS

Appointments of Deputy Clerk of the Council and Deputy Clerk of the Peace

APPLICATIONS are invited for the above-mentioned appointments. Candidates must have had considerable practical experience of the administrative and legal work of local government and of the work, procedure and practice at quarter sessions.

The salary of the Deputy Clerk of the Council will be £1,250 per annum rising by annual increments of £50 to £1,500 per annum. The salary of the Deputy Clerk of the Peace will be £250 per annum.

Applications, of which five copies must be provided, must be made on a form to be obtained from the undersigned and enclosed in an envelope marked "Appointment of Deputy Clerk" and must be delivered to the undersigned not later than January 8, 1951.

H. J. C. NEOBARD,

Clerk of the Peace and of the County Council.

Shire Hall,  
Reading.

### URBAN DISTRICT OF BEESTON AND STAPLEFORD (Population 50,000)

Appointment of Clerk of the Council

APPLICATIONS are invited for the above-mentioned whole-time appointment from legally qualified persons having wide experience in local government law and administration.

The salary of the appointment will be £1,500 per annum rising by annual increments of £50 to £1,750 per annum.

The salary given above is, except for personal fees as Returning Officer, etc., at local elections, an inclusive one and the person appointed will be required to undertake without additional remuneration all the legal work of the Council.

Every assistance will be given by the Council to the successful applicant to obtain suitable housing accommodation.

The terms and conditions of appointment together with a form of application may be obtained from the undersigned and should be returned not later than January 8, 1951.

Candidates should state whether or not they are related to any member or senior officer of the Council. Canvassing, directly or indirectly, will disqualify.

C. H. WRAGG,

Clerk of the Council.

Town Hall,  
Beeston, Nottingham.

### INQUIRIES

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### WORCESTERSHIRE

Appointment of Whole-time Male Probation Officers

THE Combined Probations Areas Committee invite applications for the appointment of two whole-time Male Probation Officers.

The appointment and salary will be in accordance with the Probation Rules, 1949, and the successful applicants will be required to pass a medical examination. Age limits 23 to 40 years, except in the case of serving officers or persons otherwise qualifying for appointment under the Probation Rules.

The one officer will serve in an urban area. The other will serve in a more scattered, partly rural area, and will have to provide a car, for the maintenance of which an allowance would be made on the County Scale. A small flat can be made available for the officer in the latter area, if he is a married man.

Applications, stating age, qualifications and experience, with the names and addresses of three referees who can speak as to the applicant's work, to be received by the undersigned by January 15, 1951.

W. R. SCURFIELD,

Clerk of the Peace.

Shirehall, Worcester. (N.3.)

### COUNTY BOROUGH OF SUNDER- LAND

Appointment of Male Probation Officer  
Appointment of Female Probation Officer

APPLICATIONS are invited for the appointment of a whole-time male probation officer and a whole-time female probation officer for the above county borough. Applicants must be not less than twenty-three nor more than forty years of age, except in the case of whole-time serving officers.

The appointments will be subject to the Probation Rules, 1949. The salaries will be in accordance with the scale prescribed by the rules and subject to superannuation deductions.

The successful candidates will be required to pass a medical examination.

Applications, stating age, qualifications and experience, together with copies of two recent testimonials, must reach the undersigned not later than 10 a.m. on Monday, January 1, 1951.

J. P. WILSON,

Clerk to the Justices and Secretary of the Probation Committee.

Sessions Courts, Gillbridge Avenue,  
Sunderland.

### RICKMANSWORTH URBAN DISTRICT COUNCIL

Assistant Solicitor

ASSISTANT Solicitor required, salary A.P.T. Va (£550 to £610 per annum). The appointment is subject to the National Scheme of Conditions of Service and is superannuable. Applications, stating age, qualifications, including date of admission, experience, and the names of two persons to whom reference may be made should be sent to the undersigned not later than December 30, 1950.

C. G. RANSOME WILLIAMS,  
Clerk of the Council.

Council Offices,  
Rickmansworth.

# Christmas Appeals

*YOU  
will derive  
greater benefit  
from  
your holiday  
if you have  
the conviction  
that some of  
your  
less fortunate  
fellow  
creatures  
are benefiting  
also by  
your thought.*

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BY HELPING

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Horses, Dogs, Cats  
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Donations & Legacies  
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M 112

The Charitable Institutions on this and succeeding  
pages are recommended for your earnest consideration.

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The  
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the long established charity  
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Please send a donation to the Secretary,  
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Giving comforts to the old folk

Bringing joy to little children in our care

Giving a big family party on Christmas  
Day for the very lonely who live in one  
room

**We can only do this with YOUR help!**

WILL YOU SEND US YOUR GIFT—

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West London Mission · Kingsway Hall  
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for information. Study it, think the matter over,  
and then

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 now happy and cared for, like  
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 children who have found love  
 and happiness in our homes. Will  
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 & 'ARETHUSA' TRAINING SHIP**

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 MORE  
 than pity'



No amount of welfare legisla-  
 tion can ever completely solve  
 the problem of children hurt  
 by ill-treatment or neglect.  
 There must be an indepen-  
 dent, experienced organisa-  
 tion whose trained workers  
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 defend themselves—and who  
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 rebuild the family life. The  
 National Society for the Pre-  
 vention of Cruelty to Children  
 depends on voluntary contri-  
 butions to continue this work.  
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 of helping the helpless, and  
 bringing happiness to those  
 who need it most.

remember them when advising on wills and bequests



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President: H.R.H. PRINCESS ELIZABETH

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**The Royal Association**  
 IN AID OF THE  
**DEAF AND DUMB**

(Founded 1840)

Registered in accordance with the National Assistance Act, 1948

PATRON: H.M. THE KING

President: THE ARCHBISHOP OF CANTERBURY

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 Middlesex, Surrey, Essex and West Kent,  
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Gifts gratefully acknowledged by  
 Graham W. Simes, The Secretary, R.A.D.D.,  
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 (late of 413, Oxford Street, W.1)  
 NOT IN RECEIPT OF STATE AID

# Justice of the Peace and Local Government Review

(ESTABLISHED 1837)

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## NOTES of the WEEK

### Leeds Juvenile Delinquency Inquiry

When the Home Secretary and the Minister of Education suggested local inquiries should be conducted as to the causes of juvenile delinquency, action was taken quickly in the City of Leeds. The Lord Mayor called a conference of interested parties. A committee of inquiry was set up and at its first meeting charts and statistics prepared by the Probation department were considered. Lines of study upon which the committee could concentrate were determined, and in order to get to grips with the whole problem; four sub-committees were set up, namely, home background, health, intelligence and education; and extra-mural activities; and work-social factors.

An interim report has now been produced, which shows that the sub-committees have been hard at work and have already amassed a good deal of information and formed some opinions. It is, however, emphasized that this is only an interim report and that some of the views expressed may be modified in the light of further information.

Two suggestions considered by the committee are worth noting: "It was suggested that where children were known to the schools or to their parents, as potential delinquents, they might be interviewed in the presence of their parents in the hope of preventing them falling into crime. There was a danger, however, that a body set up to conduct such an interview might appear to the parents to be usurping the power of the court, and it was later decided that this preventive work could best be done by the child guidance clinic to be set up by the education committee."

We entirely agree about the danger of setting up unofficial bodies which might appear to be exercising functions belonging to a court.

The other suggestion found favour, and we think it should lead to fruitful results. "The committee was addressed by the organizer of the L.C.C. School Care Committees; the functions of these committees and the main features of their organization were explained. It is felt that a similar organization might well be set up in Leeds."

It is felt that parental responsibility should be made clear, that monetary penalties should be enforced against parents and that contribution orders in respect of their children should be met. Enforcement may sometimes be difficult, but it is urged that the problem should be tackled with vigour.

### Reports of the Sub-committees

Each sub-committee has made its separate report, and these contain some important suggestions based on the information already obtained.

The home background sub-committee, as might be expected, found evidence of lowered moral standards in some homes and absence of any religious training. There is also a certain restlessness among the fourteen-fifteen age group, but it is thought that when the lengthened school life becomes accepted as the normal by pupils and parents, and when facilities are further increased, some of this restlessness will be diverted into useful channels.

The health, intelligence and education sub-committee found, as so many other people have found, that there is too little provision for the educationally sub-normal, many of whom drift into delinquency. The sub-committee makes the following suggestions: (a) residential accommodation for ESN delinquents must be provided as quickly as possible. (b) residential schools for maladjusted ESNs must be increased so that efforts may be made to prevent a breakdown situation arising. (c) more attention must be given to the early ascertainment and treatment of the "dull and backward" child. The provision of special classes, remedial centres or special schools should be considered as urgent. (d) teachers must be more adequately trained in the diagnosis and treatment of backwardness, retardation and subnormality.

The extra-mural sub-committee recognizes the value of the work done by religious bodies in providing youth organizations of various kinds. It is considered that the work for youth, undertaken by the religious organizations, could offer a fruitful field for research, especially from the aspect of teaching of moral values to youth. It is further suggested that the question as to whether or not school holidays and short hours under school discipline produce conditions for experimentation in organized out of school activities for children of school age might be investigated. As to shoplifting, especially from certain types of store, it is thought that many young people are attracted to these stores, particularly in the winter months, because they have nowhere else to go and that the provision of positive facilities, through a youth organization, would offer the best alternative. There appears to be a notable drop in the incidence of delinquency between the ages of fourteen and sixteen, and this itself suggests a further line of inquiry, though certain factors seem fairly obvious. It is considered that immediate steps should be taken, in conjunction with the education committee and the voluntary bodies to make more provision for the younger age groups.

Finally, the social factors sub-committee encountered serious overcrowding in certain parts of the city, and attributes some delinquency to this cause. While some provision is made for children of school age, in the form of clubs and other organizations, there is no outlet for the still younger children who live



in these overcrowded houses. The group suggests that there is urgent need, in areas where slum clearance has taken place, to provide small playgrounds for pre-school children during the day, and older children in the evenings, especially as there is a ban, meantime, on the opening of new nursery schools.

#### Desertion: Offer to Resume Cohabitation

When a husband who has deserted his wife invites her to resume cohabitation, justices may have a somewhat delicate task to perform in deciding whether the husband has thus put an end to his desertion. He has not, unless his offer to return to cohabitation is made in good faith and is such that in all the circumstances the wife ought to accept it. Perhaps the greatest difficulties arise where there has been constructive desertion, and the wife feels unwilling, in view of her husband's previous conduct, to take the risk of living with him again.

An important decision of the Court of Appeal on this question is *Clark v. Clark* [1950] W.N. 489. The Court reversed a decision of the Divisional Court and restored a maintenance order made by justices. The justices had found desertion, the wife having left her husband because of his ill treatment. Subsequently the husband's solicitor wrote to the wife requesting her to return. She refused because she feared that she might fare worse than before.

Bucknill, L.J., pointed out that the husband had not himself requested the wife to return or promised any amendment of conduct. The wife was justified in her refusal, and the solicitor's letter did not end the desertion. Singleton and Birkett, L.J.J., agreed. Lord Justice Singleton emphasized the principle that an appellate court does not interfere with the findings of fact arrived at by the court which is entrusted with the duty of finding facts and which has the advantage of seeing and hearing the witnesses, if the evidence can justify such findings. If in a case such as the present there was evidence before the justices which justified their findings and the making of an order the appellate court should not interfere.

#### Manchester and Salford Poor Man's Lawyer Association

This Association has a fine record and its most recent report shows that there has been no diminution in its usefulness. Naturally, it was hoped that the Legal Aid and Advice Act, 1949, would be brought into operation soon after its passage into law, but the economic situation has not yet permitted of this, and so the work goes on. It is gratifying to read that solicitors and members of the Bar are still coming forward to offer their services as honorary advisers, and that an appeal for funds was met generously. The need for such associations is emphasized in a letter, quoted in this report, from the secretary of the Law Society. This states that the Lord Chancellor and the president of the Law Society are both very anxious that the solicitors and barristers who have hitherto made so great a contribution to the public good by serving as poor men's lawyers at various centres throughout the country should continue their efforts in that respect, until such time as the economic position of the country will enable the Government to authorize the bringing into operation of the measures in the 1949 Act to provide for the setting up of the legal advice part of the scheme.

The types of cases dealt with are divided in almost exactly the same proportions as in the previous year, matrimonial and family troubles heading the list with forty-five per cent., landlord and tenant coming next with 14.5 per cent.

The report notes a number of legal developments of interest to poor men's lawyers. Among these is the making of the County Court Fees Order, 1949, which enables the Lord

Chancellor to reduce or remit fees in exceptional cases to prevent hardship. It is pointed out that magistrates have for long possessed the power to remit fees, although fees have always been a more serious problem in the county court than in the magistrates' court.

#### Detaining Goods

There is an interesting recommendation as to proceedings for detaining goods, which well deserves consideration.

"As is pointed out in *Stone's Justices' Manual* (under the title 'Property') there is no general remedy for the recovery of property in the magistrates' courts, but special provision exists in the Metropolitan area and in some towns in the provinces. Manchester is one of these, as s. 239 of the Manchester Police Act, 1844, empowers the magistrates to deal with claims for the recovery of property not worth more than £15, and this has been found a useful and inexpensive remedy in dealing with some of the cases at the Association's Manchester branches. (In one case a bullying landlady detained a former lodger's blankets, though no rent was owing; the issue of a summons by the City Magistrates' Court resulted in their immediate return.) The lack of such a provision in Salford has been realized more than once in dealing with cases at the Salford branch, and therefore the Association suggested to the Home Office that when the Summary Jurisdiction Acts are amended consideration should be given to enacting a similar provision for the whole of England and Wales."

In the Metropolitan jurisdiction to order the delivery of goods unlawfully detained is conferred on the Metropolitan Magistrates by s. 40 of the Metropolitan Police Courts Act, 1839. The proviso to the section declares that the magistrates' order is not to be a bar against the bringing of an action by any person for the recovery of goods or money in question from the person to whose possession they have come in pursuance of the order. Such a provision might satisfy those who might otherwise object in principle to conferring upon justices a jurisdiction which, they might contend, should be confined to the county court.

#### Street Works in Highways

For more than a century there has been conflict between highway authorities and public utility undertakers, about use by the latter of subsoil of the highway, with its concomitant of that use, periodical breaking up of highways. Statutory evidence of the first conflicts survives in the *Clauses Acts* of 1847; on the whole, these were well conceived to meet circumstances then prevailing, and provisions designed for gas and water were in course of time extended to electricity and sewers. In the present century, the conflicts were intensified; the subsoil works grew every year more voluminous, with the growth of population, while the motor car was compelling highways to become solid rafts of concrete or equally unbreakable material. Relations were embittered at the same time by legislation vesting control, over many highways, in authorities who did not supply any of the utilities beneath the surface. Efforts were made in some areas to carry the subsoil works in tunnels, only to produce explosions or other new dangers which led the London County Council to request the Government between the wars to investigate "the whole London subway problem." Some people pressed that subsoil utility works should always be placed beneath grass verges, or at least beneath the footways of the street, forgetting that this would mean either duplicated mains, or doubled lengths of service crossings of the carriage way, perhaps with greater aggregate disturbance than if the main ran down the middle. Argument raged round about,

between those who regarded the placing of subsoil works under highways as a privilege conferred by Parliament, which was in reality a nuisance and ought to be curbed as far as possible, and the spokesmen of the companies and other utility undertakers, who claimed that dedication of land to the public as a highway conferred not merely a right of passing and repassing on the surface, as the old writers had asserted, but also a right to have its gas, water, electricity, and other new fangled necessities, brought to it through the soil under the highway. Amid this confusion of tongues not much was done; to say "nothing" would be wrong, for the setting up of the London Traffic Advisory Committee, with the duty amongst others of trying to co-ordinate what was done in this matter in the London streets, was a big step forward. Meantime, however, statutory undertakers were at liberty to make full use elsewhere of the provisions of the Clauses Acts, or other legislation empowering them to break up highways, and the taking of gas and electricity out of the hands of local bodies (elected or not) might well have led to greater absence of co-ordination—for, when all was said about the conflict of powers and chaos of authorities before the war, it was true nevertheless that some big local authorities had all the utilities as well as the highways in their own hands and could, if the council was strong enough to control its committees and departmental managers, ensure by internal action that reason and co-ordination should prevail. The year 1947 put an end to this unity in the fields of electricity and gas. It was therefore high time for Parliament to tackle this old problem. A Parliament like the present, with too even a balance in the Commons for major legislation upon party lines, gives more opportunity than is normal for legislation of which nothing better can be said than that it is useful. Even with this advantage, however, it is to the credit of the Ministry of Transport in particular, and also to the credit of a great number of authorities and undertakers, that the Public Utilities Street Works Act, 1950, has been passed—and passed with scarcely a ripple on the surface. It is an exceptionally complicated Act, covering eighty pages of the statute book. We hope before long to publish three short articles stating its effect as simply as the subject matter will allow.

### The Playground Brawler

There is a byelaw for good rule and government widely in force under s. 249 of the Local Government Act, 1933, or the earlier powers given by s. 23 of the Municipal Corporations Act, 1882, or s. 16 of the Local Government Act, 1888, which makes it an offence, while on the premises of a public elementary school, to refuse to depart and to make use of violent language or behave in a disorderly manner. The byelaw is verbose and not particularly well expressed: like many byelaws for "good rule and government," it probably began with a few local authorities, and has been repeated from precedent to precedent. We have abbreviated it here, since we are for the moment concerned only with its use of the phrase "a public elementary school."

This phrase has now passed out of educational technical language, and s. 120 (1) (a) of the Education Act, 1944, requires that reference to a "county school or voluntary school" shall be deemed to be substituted for reference to a "public elementary school" in any enactment passed before the coming into force of Part II of the Act of 1944. This being so, is the byelaw still enforceable? Parliament defined the word "enactment" in s. 134 of the Local Government Act, 1929, where the word is declared to include amongst other things a byelaw, but did not do so in the Act of 1944. On the other hand, the fact that byelaws made before 1944 are not saved either by definition or in terms, as they are by the proviso to s. 307 of the Local Government Act, 1933, and s. 343 of the Public Health Act, 1936,

might if the question came before the High Court incline the court to construe the word in the present context by reference to the mischief to be prevented. This, we take it, is the sort of parent who invades school premises, wanting to knock Mr. Headstone on the nose by reason of a grievance of his urchin. If the Court put on the word in the Act of 1944 a narrow meaning, which would enable angry parents to make the trouble which the byelaw was intended to prevent, hundreds of local authorities might feel obliged to make fresh byelaws. And here comes another difficulty. The most numerous local authorities with power to make this byelaw are the councils of boroughs, who have now lost their educational functions except in county boroughs.

County councils, who are education authorities, can make the byelaw, but by the proviso to s. 249 (1) of the Act of 1933 their byelaws do not take effect in a borough. We cannot say that the matter is beyond doubt, but doubt seems so far to have been expressed by only one of our correspondents. Taking on the one hand the ambiguity of the word "enactment," and on the other the tendency of modern judges to look at the substance rather than at technical language, we think that where a local authority had put a byelaw in force before the Act of 1944 proceedings under it can be taken in a proper case with fair hope of a conviction.

### Rivers (Prevention of Pollution) Bill

Legislation based on the Hobday report, introduced by the Minister of Health just inside one year from the announcement of that intention, would repeal nearly the whole of the Rivers Pollution Prevention Acts, 1878 and 1893, some other general provisions, and parts of local Acts obtained by several county councils, including Cumberland in 1948. Under cl. 1 of the Bill, the function of enforcement when an offence is committed against cl. 2, prohibiting the use of a stream for disposal of polluting matter and stating other offences, will be a river board, a catchment board in the Thames and Lee catchment areas and a county council in any other area. A local authority as a sewerage authority defined in the Public Health Act, 1936, will frequently be concerned under cl. 2 (3), deeming the authority "to cause or knowingly permit to enter a stream any poisonous, noxious or polluting matter which passes into the stream from any sewer or sewage disposal works vested in them."

A county court would have power to make an order under cl. 3, prohibiting certain uses of a stream, land adjoining a stream, or of a vessel in a defective state of repair, where a river board apprehended possible pollution. Byelaws made by a river board pursuant to cl. 4 may prescribe standards to determine when matter is polluting, including by reason of its temperature or its effect in discolouring a stream. The Minister of Health may by order after at least one month's notice of his intention has been given, pursuant to cl. 5 (5), to county or borough or district councils who may be affected, apply major provisions of the Bill "to any tidal waters or parts of the sea specified in the order."

Restrictions on bringing into use a "new or altered outlet" or "a new discharge" to a stream are laid down in cl. 6, but would not apply if forming part of a sewage disposal or sewerage works of a local authority constructed or altered, or financed from a loan, approved or authorized by the Minister of Health. Where the Minister considered it expedient to do so, in connexion with prevention of river pollution, he could exercise power proposed by cl. 8 to make an order under the Public Health Act, 1936, s. 6, uniting districts or parts of districts of local authorities under a joint board for the purpose of sewage disposal or sewerage, notwithstanding that no application in the behalf is made to him by any of the local authorities concerned.

# RHYMING RELICS OF THE LEGAL PAST

A SUPPLEMENT: GIVING THE IDENTITY OF THE POET AND OF ALL TO WHOM HE ALLUDED AND THE APPROXIMATE DATE OF HIS POEM

By L. G. H. HORTON-SMITH, Barrister-at-Law.

The publication of "*Rhyming Relics of the Legal Past*" in last year's Christmas number of *The Justice of the Peace*, followed by its republication in revised form as an independent monograph in March of the present year, has elicited so much professional interest in the anonymous poem, entitled "*The Hope of the Briefless or, The Cradle of Crime*"—rescued from the forgotten past and therein set forth—that I have since, in response to wide request, been at great pains to ascertain, if possible:

1. Full details concerning the divers persons, other than the fourteen counsel therein referred to; including the identification of those of such persons therein left unidentified. This I will call "Clearing the Ground."

2. Full details concerning the seven of such fourteen counsel therein referred to and already there identified.

3. The identification and full details concerning the other seven of such fourteen counsel therein referred to and there left unidentified.

4. The approximate date when the poem was written. (I had already shown that it was in print in pamphlet form so long ago as November 30, 1882; but it will in due course be seen that its date was long antecedent to that.)

5. The approximate date when the poem was first passed into print.

6. The identity of the anonymous Wykehamist poet himself.

## ACKNOWLEDGMENTS

In my search I have been privileged to receive the close assistance of many, including my friends Mr. T. Hodgkinson, the Librarian of my own (i.e., Lincoln's Inn, Mr. H. A. C. Sturges, M.V.O., Librarian and Keeper of the Records of the Middle Temple, and Mr. Gerald O. Rickword, Editor of the *Essex Review*, and also, no less, of Mr. T. C. Lund, Secretary of the Law Society, Mr. J. F. Gregg, LL.M., Town Clerk of Birmingham, Mr. E. J. Dodd, C.B.E., Chief Constable of Birmingham, Mr. F. J. Patrick, F.L.A., City Librarian of Birmingham, Mr. D. M. Norris of Mr. Patrick's Staff, The Rt. Hon. Lord Ilkeston, late Stipendiary Magistrate of Birmingham, Mr. Roy Robinson, Sub-Treasurer of the Inner Temple, and, last but very far from least (as will hereinafter be seen), Mr. J. M. G. Blakiston, Moberly Librarian of Winchester College. To one and all of them I hereby tender my warmest gratitude.

## I.—CLEARING THE GROUND

Line 5. "The banquet-room at Dee's." This refers to the Old Royal Hotel, 26, Temple Row, Birmingham, where Frederick Dee reigned as Proprietor from about 1831 up to 1861. Charles Dickens knew it well.

Erected in 1772 and then known simply as "The Hotel" it had, by the time when the *Pickwick Papers* were published in 1836/7, become known as "The Old Royal Hotel" (see Chapter I); the word "Royal" having been added owing to Princess (afterwards Queen) Victoria having once slept there; and the word "Old" having been added in the nature of an epithet of endearment and not as a pointer to any antiquity. Whilst Frederick Dee there reigned, it became alternatively known as "Dee's Hotel."

It will be recalled that the *Pickwickians* came to this hotel and, after the momentous interview with Mr. Winckle, Senior, returned thither and went "silent and superlous to bed."

Charles Dickens visited Birmingham some twelve times between 1840 and 1870, and on most of the early occasions he is believed to have stayed at this hotel. On January 6, 1853, he was presented with a silver "Iliad" salver and diamond ring by the people of Birmingham, whereafter the company—to the number of 218—adjourned to this Hotel, then known as "Dee's Hotel," where a banquet took place, with Henry Hawkins the Mayor in the Chair and Peter Hollins the sculptor in the Vice-Chair, whereat Charles Dickens made his promise to give, in aid of the Birmingham and Midland Institute, his first public reading from his books. (See the standard "*Life of Charles Dickens*," by John Forster, published in 1872-1874, a memorial edition of which was published in 1911, and "*The Inns and Taverns of Pickwick*," by B. W. Matz, 1921.)

I gather from Mr. Dodd that its official name—that used for licensing purposes—was "The Royal Commercial Hotel." It is now known as "The Old Royal Restaurant," or, more commonly, as "Ye Olde Royal."

Line 27. *Harding and Hall*. These were obviously solicitors practising at the Birmingham Sessions at the period under consideration. According to the Law List of 1845 there was one Hall and there were two Hardings then practising as solicitors and William Sextus Harding. That Law List of 1845 was the last wherein such R. H. Hall, or anyone surnamed Hall, appeared in connexion with Birmingham; and in the Law List for 1850 we find only the two Hardings aforesaid. The said R. H. Hall was admitted as a solicitor at Michaelmas, 1840, practised in Birmingham and died in 1857; the said T. Harding practised alone (and not in partnership) in Birmingham from 1840 till his death on February 29, 1860; and the said W. S. Harding was born in 1806, was admitted as a solicitor at Easter, 1828, practised in Birmingham till his retirement from business in 1882—his firm being Harding & Sons—and died on March 6, 1896.

Line 37. Note 12. This is *William Henry Gem*: admitted as a solicitor at Michaelmas, 1823, who thereafter practised at Birmingham throughout his legal career—during which he was Clerk to the Magistrates at Birmingham—until his death on December 3, 1855, at the age of sixty-four. He was, in his time, Clerk to the Commissioners of Land and Assessed Taxes.

Line 41. Note 13. "*Blundering Ed-s*" who "bellows." There were two persons of the time, either of whom—so far, at least, as the abbreviation "*Ed-s*" goes—can answer this description.

The one is *George Edmonds* who, according to a Birmingham Directory for 1849, was then Clerk of the Peace. He had been appointed as such in 1840 and served as such until his death on July 3, 1868. He is, doubtless, the *George Edmonds* who was present at the hereinafter mentioned presentation in Birmingham to Captain Alexander Maconochie in October, 1851. (See below, s.v. Line 133, Note 9.)

The other is *Edward Edmonds* (per Mr. Patrick) or *Edward Edmonds* (per Mr. Dodd), Warrant No. 10, who enrolled in the Birmingham Police Force on October 3, 1839, being one of the original members of the Force and, so far as can now be ascertained, actually joining with the rank of Sub-Inspector. The outer cover of the personal papers relating to him is marked "For papers see 'Superior Appointments,'" but, unfortunately, the whereabouts of these papers is not now known. I can state, however, that in the said Birmingham Directory for 1849 he is recorded as then Inspector at Birmingham Police Station, No. 3.



It might well seem, on first thoughts, that the phraseology "blundering Ed-s bellows" would be more likely to be true of a police inspector than of a clerk of the peace.

Nevertheless, it is clear from what follows that it was the clerk of the peace to whom the poet thus alluded. For Mr. Norris writes to me that George Edmonds (*sic*) the clerk of the peace, "was such a well-known figure in Birmingham that he could scarcely be omitted from this poem" and adds: "Also the poet states that he 'bellows,' and George Edmonds (*sic*) is described as 'having had a voice like a trumpet'."

Line 87. "*Hermon's holier Hill*" This refers to *Matthew Davenport Hill*, called to the Bar by Lincoln's Inn in 1819, who was Recorder of Birmingham from 1839 to 1865 or 1866 and died on June 7, 1872. He was Birmingham's first Recorder. In 1857 he issued a work entitled "Suggestions for the Repression of Crime, contained in Charges Delivered to Grand Juries of Birmingham"; supported by Additional Facts and Arguments"; a work to which I shall refer later, *s.v.* Line 133, Note 19.

Further information concerning him, as also concerning the hereinafter mentioned Captain Alexander Maconochie (Line 133, Note 19) will be found in: "The Recorder of Birmingham: A Memoir of Matthew Davenport Hill," by his daughters Rosamund and Florence Davenport Hill, published in 1878, to which I shall later herein recur.

Line 108. Note 17. This is *George Philip Tandy* (Warrant No. 1051), who enrolled in the Birmingham "Detective Service" on August 13, 1841, and was later promoted to the rank of sub-inspector therein upon the recommendation of twenty inhabitants and ratepayers of the Borough of Birmingham. According to the papers available it may reasonably be presumed that his said promotion took place in 1845; and he was mentioned in the said Birmingham Directory for 1849 as then holding that office. During the four years 1849 to 1852 he was responsible for the appearance at assizes and sessions of forty-two prisoners.

Line 108. Note 18. *Young*. This person's identity is the only one which baffles me. From the context he might well seem to have been a member of the Birmingham "Detective Service," like Tandy. But such a view would appear not to be correct. For I learn from Mr. Dodd that from September, 1842, to July, 1854, there were only three men in the Birmingham Police Force surnamed Young; and that their average length of service was only four months and that all three of them were dismissed for reasons which are now unknown. The next Young thereafter was not enrolled until 1874, and he resigned after eighteen months' service. Accordingly—and in spite of the context—Mr. Dodd regards it as unlikely that the *Young* of the poem was a police officer. Who and what he was must, therefore, remain an open question; though, happily, not one of much importance.

Line 133. Note 19. This is *Captain Alexander Maconochie*, a well known prison reformer in his time, and author of a pamphlet "On Reformatory Discipline in County and Borough Prisons," published in Birmingham in 1851, who had a close connexion with the above-named Matthew Davenport Hill, the Recorder of Birmingham. According to Mr. Patrick, he "appears to have worked with Hill." He had been superintendent of the convict settlement on Norfolk Island, but he returned to Birmingham in 1845 and, later, from 1849 to 1851, was Governor of the Borough Gaol of Birmingham. On his retirement, in 1851, a public presentation was made to him, the said Recorder making the presentation, and amongst those attending was one George Edmonds—obviously the George Edmonds, clerk of the peace, for whom see above, *s.v.* Line 41, Note 13.

The foregoing information concerning Captain Maconochie is derived from the already mentioned work of the said Recorder, issued in 1857, wherein—amongst the additional matter on its

page 265—there is an account of the said presentation, taken from the "Birmingham Journal" of October 25, 1851. I may add that—though the Captain finds no mention of "The D.N.B."—there is a passing reference to him in "The Encyclopaedia Britannica," 11 edition, *s.v.* "Prisons."

Both Mr. Patrick and Mr. Norris tell me that, in point of fact, he was "dismissed" in 1851 from his governorship of Birmingham Gaol. On my passing this statement to Mr. Hodgkinson, from whom I had derived what I have already above written concerning this individual he replied as follows: "As regards Captain Maconochie, I got the impression from Hill's book"—*i.e.*, his work above referred to—"that his ideas on prison reform were by no means popular, and I think it not at all unlikely that the presentation was a gesture of defiance to those who had dismissed him. Hill's speech on that occasion seems to me to support this view to some extent, though he did not say anything really definite."

Mr. Hodgkinson's views are confirmed by the above-cited work from the pen of the Recorder's daughters at page 241, where they write: "Captain Maconochie was dismissed in 1851. His treatment was considered by Mr. Hill and other friends as undeserved, and on his quitting the town they presented him with a purse containing £250."

His own above-mentioned pamphlet (published in 1851) is prefaced by two letters, one of which—addressed by him from the Borough Prison (*i.e.*, the Borough Gaol) to the Magistrates of Birmingham on July 24, 1851—commences as follows: "Gentlemen,—At a very small meeting of magistrates assembled in Quarter Sessions on the 2nd July" (1851), "a resolution was come to, and has since been intimated to me, that 'from and after the 17th October, next, I should cease to be Governor of this Prison.' I was not heard either on that occasion, or on any one previous in which the subject was discussed; neither has any specific reason been assigned to me for this removal . . ."

I close concerning him with the following extract from the *Birmingham Gazette* of October 27, 1851, referring to the opening of the public meeting to make the above-mentioned presentation to him: "Now they would perceive that this tribute of respect was given by the private friends of Captain Maconochie . . . quite apart from the circumstances regarding the prison which had recently transpired in this borough."

## 2 and 3.—THE FOURTEEN COUNSEL

Let me now give the identification and the date of call to the Bar—with only such other dates as are here material—of the fourteen practising counsel alluded to in the poem, following the order wherein they respectively therein first appear. For the purpose of our question 4, the date of call is of profound importance, at least for the purpose of finding the *earliest* date at which the poem can have been written. The fourteen are:

(1) C. G. Prowett (I. T.), 1848; (2) S. J. Partridge (G. L.), 1842; (3) J. Lea (L. I.), 1845; (4) J. Lee (M. T.), 1846; (5) J. Balguy (M. T.), 1848; (6) R. Miller (M. T.), 1826, sergeant 1850, C. C. Judge 1856; (7) C. J. Gale (M. T.), 1832, C. C. Judge 1847; (8) A. Bittleston (I. T.), also spelt in the poem with a final e, 1841; (9) J. Mellor, High Court Judge, 1881; (10) J. Cockle (M. T.), 1846; (11) I. Spooner (L. I.), 1837; (12) W. A. Mundell (M. T.), 1847; (13) W. H. Roberts (L. I.), 1842; and G. Hayes (M. T.), 1830, who married on September 3, 1839.

## 4.—THE DATE OF THE POEM

Let us now endeavour, from the foregoing recorded facts, to ascertain the date, or at least the approximate year, in which the poem was written. This, though at first sight it may seem easy, is by no means so.

It was obviously written before November 9, 1854, when Joseph Jee of its line 16, note 4, died. But, apart from that, line 110 provides us with the *latest* year in which it can have been written. For, assuming *Harnsworth's Encyclopedia*, published in or about 1927, to be accurate, transportation beyond the seas was finally abolished in 1853.

Further, even that date for the poem can, I think, in view of what I have already above recorded concerning Captain Alexander Maconochie (of line 133, note 19), be narrowed down to the beginning of 1851 at the latest, and more probably to 1850.

The greater difficulty lies in ascertaining what can have been the *earliest* year in which the poem can have been written.

The poet, speaking of himself in line 18 as then "a novice," says that "he caught some useful hints in vice from Gale"; and, as Gale (of line 19, note 7) became a county court judge in 1847, one might readily jump to the conclusion that the poem was written either in or before that year, 1847.

That, however, cannot be the case, because at that time neither Prowett (of line 13, note 1) nor Balfour (of line 17, note 5) had yet been called to the Bar, both having been called only in 1848 whilst Mundell (of line 169, note 27) was only called in 1847.

Personally, I am inclined to ascribe the writing—as contradistinguished from the printing—of the poem to the year 1850, *exactly* 100 years ago, and the inclusion of Gale amongst the fourteen counsel alluded to by the poet may well find a satisfactory explanation in the view expressed to me by Mr. Hodgkinson on the matter, namely, "that the author wrote some time after his arrival on the circuit and that his memory (as memories do) led him to think that characters whom he had known over a period of years were all present at one time." He adds that he regards this view as supported by the poet's reference (line 133, note 19) to Captain Alexander Maconochie, the details concerning whom I have already given above.

I would myself add, in this regard, that in the poem (line 173) Miller was not as yet a sergeant and only so became (as above shown) in 1850.

Mr. Hodgkinson's observations apply with even greater force to the poet's mention in line 27 of the Birmingham solicitor, R. H. Hall, who was no longer in practice after 1845: a fact which I only discovered at a later date in course of my researches.

From all the foregoing the indications are that the poet himself—whether yet actually called to the Bar or not—attended the Midland Circuit and the Birmingham Sessions, whilst the said R. H. Hall was still practising as a solicitor at those sessions and C. J. Gale as a counsel thereat—and so in the former case in or before 1845 and in the latter case in or before 1847—but only wrote his poem after Prowett and Balfour had been called to the Bar in 1848 and had, moreover, begun to make their way at the Birmingham Sessions.

Taking all in all, 1850 results as the year, or at least the approximate year, wherein the poem was actually written.

### 5.—THE DATE OF PRINTING

As to the date when the poem was printed, it can readily be deduced from its closing Note (the poet's own note) 33—commencing with the words "I cannot allow these wonderfully fatidic lines" (*i.e.*, lines 169 onwards) "to pass into print without calling attention to their marvellous realization"—that the poem was not printed till "long" after 1856, in which year Miller (as already shown) had become a county court judge. Further it is clear from line 172 that it was not printed before 1861; for it was not until that year that "Mellor's brooding schemes of greatness" hatched in his appointment as a High Court judge.

Thus 1861 is the earliest and 1882 is the latest year for that

of its "passing into print"; and I cannot give the year in question with any greater precision.

### 6.—THE POET'S OWN IDENTITY

The poet only refers to himself once, namely, in his opening line where he describes himself as a Wykehamist; "Fostered by Wykeham, Alma Mater's Son." We must, therefore look beyond the poem for his own identification.

Consequently, it occurred to me that, if I could secure a list of all members of the Midland Circuit of the approximately relevant period and were to eliminate therefrom the fourteen counsel already above-mentioned, we should know that our poet must be sought amongst those not thus eliminated.

Mr. Hodgkinson kindly compiled for me, at first, a list of that circuit from the only Law List then available to him, namely that for 1855.

That list numbered seventy-one, plus two—namely J. Barber and L. Field—who, though attending Birmingham Sessions, were not given in the circuit list.

Of these seventy-one, there were twenty-five given as then attending Birmingham Sessions including twelve of the fourteen alluded to in the poem. Naturally Joseph Jee (M.T.) and Charles James Gale (M.T.)—two of the fourteen alluded to in the poem—were not in that Law List for 1855, seeing that the former had died in November, 1854 as aforesaid and that the latter had become a county court judge in 1847 as aforesaid.

Eliminating, therefore, from the seventy-one the other twelve counsel alluded to in the poem, we became left with a list of twenty other counsel (including the said J. Barber and the said L. Field) who in 1855 were attending Birmingham Sessions.

Of these twenty I need here only mention those with surnames—whether with or without their Christian initials or Christian names—found in the Wykehamist records of the relevant period, presently to be mentioned. These were A. R. Adams—*i.e.*, Arthur R. Adams, called to the Bar by the Middle Temple in 1839—R. H. Palmer, C. Manley Smith—*i.e.*, Charles Manley Smith (of whom more presently)—and J. Smith, *i.e.*, John Smith, called to the Bar by the Inner Temple in 1838.

That list of twenty I then sent to Mr. Blakiston for consideration in conjunction with the Records of Winchester itself and on July 5 he replied as follows:

"I am now in a position to report on your list of names and to make a suggestion as to the identity of the poet.

"The main trouble is that before 1850 or so we possess no *biographies* of Old Wykehamists, except of course in the case of really famous ones. We have nothing but lists of names (often without initials) and only occasionally has a librarian or other interested person been able to add any further information.

"Consulting such a name-list for the period 1800-1835, I find the following, and I give to each his school years: (1) Adams, no initials, 1824-25; (2) Adams, no initials, 1829-34; (3) Sir Roundell Palmer, First Earl of Selborne, 1826-29; (4) Charles Manley Smith, 1834-36; and (5) a number of Smiths without initials.

"My No. (4) might presumably," he concludes, "be your C. Manley Smith."

As to A. R. Adams and J. Smith, mentioned above, we can say no more. We can also dismiss from our minds R. H. Palmer; for he was not Sir Roundell Palmer. Not only had the latter no second initial, but further he has left it categorically upon record in his "Memoirs" that he never went circuit. But for these two facts, it would have been distinctly tempting to identify him as our poet; and all the more so in that he was in fact a poet and won the Newdigate Prize at Oxford in 1832.

We were thus left—for the time being—with but one name, that of *Charles Manley Smith* who "fitted"—so to say—with the relevant dates and whom some of us are privileged still to remember as a Master in the Queen's Bench Division of the High Court of Justice.

We can learn all concerning him from the obituary notice of him which appeared in the *Law Journal*, vol. XXXVII, 1902.

Born in 1819, the younger son of William Smith of Fairy Hall, Mottingham, Co. Kent, he was educated at Winchester as aforesaid 1834-36, practised as a special pleader from 1847 to 1853, was called to the Bar by the Inner Temple in 1853, became a Master of the Queen's Bench in 1865, was author of "The Law of Master and Servant," and edited "Hodges on Pleadings." He married in 1848 Georgina Fanny née Ibbetson, youngest daughter of Robert Ibbetson, Governor of Penang, and died on November 13, 1902.

But two great difficulties arise, if we seek to identify him with our poet: the first of which may best be put in the form of a question, a question relative to a time of 100 years ago: Could a "special pleader," not yet called to the Bar, attend Circuit and Sessions?

As to this: Mr. Sturgess, relying on Marchant's "*Barrister-at-Law*," pp. 149-150, writes: "It seems to me that a special pleader might well have attended court and sessions"; but he adds: "It seems, however, that he could not"—i.e., before being called to the Bar—"have been a member of the Circuit Mess."

The latter observation, if correct, would presumably also apply to membership of a Sessions Bar Mess.

But—in view of what our poet himself writes—it may well seem that such presumption should not too readily be accepted. For line 5 of the poem seems, of itself, to indicate that in those days, provided that an aspirant had "fixed" on his circuit, he could attend sessions, and, indeed, so attending, could dine with the mess. For this latter our poet most certainly did, as shown by his lines 6-19, and, indeed, in some slight degree this is so even to the present day.

The second—and to my mind equally great difficulty—lies in the fact that, even if such first difficulty may be overcome, it still remains the fact that Manley Smith would never have known the Birmingham solicitor R. H. Hall (of line 27), seeing that the latter ceased to practice in 1845, two years before Manley Smith in 1847 became even a "special pleader."

Still quite unconvinced, therefore, of the possibility of Manley Smith having been our poet, I was enabled—through the kindness of Lord Ilkeston—to come into touch with Manley Smith's grand-daughter Mrs. Welsh: and from her I learn that, though both his sons were versifiers in their youth, she had never heard of her grandfather having himself so been.

Taking all the foregoing into account, I considered it impossible to identify Charles Manley Smith as having been our poet. Consequently, I pursued my researches further: and now, at long last, they have been rewarded.

For just at this time the Law List for 1850 became again available and Mr. Hodgkinson at once sent me therefrom the list of counsel who were attending the Midland Circuit in that year, 1850, but not in the year 1855. These numbered twenty-one, of whom five were then—i.e., in 1850—attending Birmingham Sessions. These five—the only ones with whom we need here concern ourselves—were *Joseph Jee*, already above-mentioned, who was called to the Bar by the Middle Temple in 1846 and died on November 9, 1854, and who, being one of those referred to by the poet (line 16) cannot of course be our poet; *G. M. W. Peacock*, called to the Bar in 1846; *N. C. Radiger*, called to

the Bar in 1843; *G. Willmore*, called to the Bar in 1829; and *Sir J. E. E. Wilmot*, called to the Bar in 1842.

I thereupon sent these last four names to Mr. Blakiston for comparison with his Winchester records, and he has replied to me as follows: "As far as I can ascertain the only Wykehamist on your 'additional' list is Sir J. E. E. Wilmot who was at the School from 1823 to 1827. So it seems to lie between him and Charles Manley Smith. It will be interesting to hear how you solve the problem."

Looking up the "*Dictionary of National Biography*" and other sources of information, what do we find concerning the former? We find him to have been Sir John Eardley Eardley-Wilmot, second baronet, who was born in 1810, was called to the Bar by Lincoln's Inn in 1842, and apparently thereupon joined the Midland Circuit and Birmingham Sessions at once. In 1852 he became Recorder of Warwick and so remained until 1857 and in the meantime he became in 1854 a county court judge and so continued until 1871, when he resigned his judgeship; and from 1874 to 1885 he sat as Member of Parliament (Conservative) for South Warwickshire. He wrote a certain amount on legal and political subjects and died in 1892. But that was not all, for we further thence learn that he was awarded at Oxford University in 1829—when he was about nineteen and a member of Balliol College—*The Chancellor's Medal for Latin Verse*.

Mr. Hodgkinson suggests—and not without reason—that our poet, having already by his opening words, "Fostered by Wykeham," adequately described himself as a Wykehamist, was, in his words then following, "*Alma Mater's Son*," referring to his University.

Be that as it may be, the solid and outstanding fact remains that Sir J. E. Eardley-Wilmot, in his younger days, was obviously an able writer of Latin verse and may well therefore—with a mind so attuned—have written English verse as well. My mind went back at once to John Milton, most of whose exquisite Latin poems were written in his Cambridge years, and who was later to be acclaimed as the author of "*Paradise Lost*." Again, some of us can name at least one member of the Bar, living today, many of whose early poems in Latin written in his University years—to say nothing here of his versions of passages from Shakespeare and from Tennyson in Greek iambs—have been published, some here, one in Italy, and others in the U.S.A., and who has also been the author of many an English poem published in a diversity of journals and the like over past years, though never yet re-published together in one volume. May it not have been the same—or much the same—with the winner of the Oxford Latin Verse Prize in 1829?

Sir J. E. Eardley-Wilmot—unlike Charles Manley Smith—would have known the Birmingham solicitor R. H. Hall (of line 26) for two or three years before the latter ceased to practise in 1845 and would also have known C. J. Gale (of line 19, note 7) for four or five years before the latter became a county court judge in 1847, and he was, moreover, still recorded as attending Birmingham Sessions in 1850, the year wherein (for the reasons already above given) our poem would appear to have been written. That Gale's name was not given in the Law List for 1850 amongst those then attending the Birmingham Sessions is fully accounted for by his having already by then become a county court judge as aforesaid.

Does not everything, therefore, seem to point to but one conclusion? Subject to any further evidence which may be forthcoming from any reliable source, I cannot but think that our conclusion must be that in Sir John Eardley Eardley-Wilmot, second baronet, we have now at length found the identity of:

"OUR POET."

## THE UNREPORTED CASE OF R. v. LUCKIE

My wife and I had retired late. I had arrived home about midnight from a re-union hot-pot supper at the "Coach and Horses," organized by the local branch of the Desert Rats' Association, which had been a pronounced success, and many battles had been re-fought with vigour and tenacity. The strategy employed was subtle in the extreme and such as to have been entirely beyond the mental capacity of the General Staff responsible for the original battles. Many V.C.'s had been earned but none awarded.

The conviviality of the evening had not conduced to a sound, dreamless sleep, hence it came about that I had perforce to listen to a tiresome and prosy solicitor urging that hot-pots being made of desert rats were outside the scope of s. 28, and therefore it was abundantly clear there was no power to remand him in custody for a mental report. The advice I was prepared to give will never be known, for I was brought to semi-consciousness by a violent impact of my wife's elbow on my ribs. "Wilfred," she said, "that's the telephone." "Who can it be at this unearthly hour?" I asked. "Perhaps it's mother ringing up from the station to say she has come to stay." My wife's reactions to a crisis even in the day-time are quite unpredictable. "Yes, but why come in the middle of the night?" I didn't wait for an answer, but went downstairs. The voice at the other end of the telephone said: "This is Inspector Pyefinch, C.I.D. A woman has been seriously wounded and is in hospital, and is not expected to recover. Her assailant is in custody, charged with attempted murder, and as a matter of urgency the woman's deposition should be taken."

After further particulars, I undertook to make the necessary arrangements, and Pyefinch said he would call in a car in ten minutes. This was my first experience of being called out during the night for a deposition and in my semi-somnolent state it was difficult to recall the procedure. Why wasn't I prepared? What shall I need? New Testament? Of course there's the old family Bible, but that might be too cumbersome. Foolscap? The only paper in the house seemed to be my wife's scented note-paper, which was hardly appropriate. I decided I would need to call at the office. What about a magistrate? I'll ring up Mr. Merrick, he's a decent sort and won't mind turning out. What's his telephone number? "Joan," I called upstairs, "I can't find my glasses anywhere; what have you done with them?" "I haven't touched them," my wife replied. "Is it mother?" "No, it isn't," I said testily, having returned to the bedroom. "Look in this directory for Mr. Merrick's telephone number. I have to go to hospital to take a deposition." Fortunately my wife didn't ask what a deposition was, and why it had to be taken to hospital. In due course I arranged to call for Mr. Merrick, and as it was a cold misty night I put on a heavy overcoat. My collar stud had decided to be unco-operative and had hid itself, so I put a scarf around my neck. When Pyefinch drew up at the door, I was about to leave, when a cold wind called attention to the absence of trousers. I donned an old pair of flannels. My glasses were in the pocket!

After calling for Mr. Merrick and collecting from the office what I thought were the essential documents, we arrived at the hospital. The doctor who greeted us knew Pyefinch, and looking at me unapprovingly, asked if I were the prisoner. My appearance apparently was against me! The accused now having arrived, I explained to him that having regard to the serious nature of the charge and the condition of the woman, it was intended to take her evidence and he would be entitled to ask questions. I asked him if he wished a solicitor to be sent for, to which he replied

"No." By a remarkable feat of memory, having regard to all the circumstances, I had in mind *R. v. Harris*.

We entered the ward. Although the woman was gravely ill, she appeared rational and the giving of her evidence presented no difficulty. The same formalities were observed as in court. At 10 a.m., the same day, the woman died and the accused was charged with murder. The evidence of the woman was vital to the prosecution.

At 3 p.m., Mr. Merrick rang up to inquire how the woman was and I told him of her death. I said: "The police will be ready to go on with the committal proceedings next week; will that suit you?" "No," he said, "haven't you heard?" "Heard what, sir?" My knees began to shake. "I am sailing for Australia on Monday and won't be back for twelve months." I collapsed.

### AT THE ASSIZES—R. v. LUCKIE

Mr. Justice Sawle: "Ladies and gentlemen of the jury, I directed your retirement from the court so that I might hear arguments by counsel on the admissibility as evidence of a certain deposition made at hospital in the presence of the prisoner by the woman Wentwistle, whose subsequent death is the subject of a charge of wilful murder. In addition to the arguments of counsel, I have heard the justices' clerk, Mr. Wilfred Stickle, on the circumstances in which that deposition was made. It appears that the justice who attended at the hospital in company with and by arrangements made by Mr. Stickle, had made prior arrangements to sail to Australia within a few days of taking the deposition. It is singularly unfortunate that the justice did not consider it necessary to divulge this information when he was asked by the clerk to attend at the hospital, and one would have thought, having regard to the importance of the matter, that the clerk would have made a simple inquiry from the magistrate on the question of his availability to take the remaining depositions at a later date. By this regrettable lapse on the part of the clerk, the prosecution will no doubt have been placed in great difficulty. In certain circumstances the law permits a deposition of a deceased person to be read as evidence at the trial of a person on indictment subject to certain conditions. If the deposition purports to have been made under the Indictable Offences Act, 1848, which is generally the case, it must have been made as part of the committal proceedings before the examining justice. In the present case, the examining justice was not the justice before whom the deceased woman's deposition was made for the reasons I have already mentioned. Had this been the case the law would have permitted the deposition to be received as evidence before you after proof of the woman's death. Counsel for the prosecution has argued that this court could accept the deposition as evidence on the ground that the deposition was taken, not under the Indictable Offences Act, but under the Criminal Law Amendment Act, 1867. I have, however, rejected that argument for the reason that the procedure required by that statute was not observed, there being no evidence before me that the prisoner was given reasonable or indeed any notice in writing of the justice's intention to take the deposition. The failure to give this notice makes the deposition without question inadmissible as evidence under the 1867 Act. Counsel for the prosecution then submitted that the deposition of the deceased could be regarded not as a deposition under either statute, but as a dying declaration. Counsel for the defence, however, rightly pointed out that the statement could not be so regarded for the reason that there was no evidence which would satisfy me, as required by the law, that the woman at the time she made



the statement knew beyond doubt of her approaching death. I have ruled, therefore, that the deposition of the deceased cannot be read as evidence in this trial.

Mr. Clayfoot, K.C. (counsel for the prosecution): "Having considered carefully the effect on the case for the prosecution of your Lordship's ruling, I offer no other evidence."

Mr. Justice Sawle: "In that case, members of the jury, I direct that you bring in a formal verdict of not guilty." (Verdict of not guilty given and the prisoner discharged.)

Mr. Justice Sawle: "I am not at all impressed with the manner in which Mr. Wilfred Stickles carried out his duty on the occasion in question. He failed in two respects: first, he

ought to have made sure that the justice who took the woman's deposition could with reasonable certainty have undertaken to conduct the committal proceedings, and secondly, as a matter of precaution, he ought to have seen to it that a notice in writing was in any case given to the prisoner Luckie. In the latter event counsel's submission that the deposition could be admitted as a deposition under the 1867 Act, failing admission under the 1848 Act, might have been valid having regard to the authorities. As it is, Mr. Stickles may feel, as I do, that his neglect may have resulted in a serious miscarriage of justice." (Mr. Wilfred Stickles left the court with his mind in doubt as to whether he or the man Luckie had been on trial.)

H.H.

## THE JEAUVAIS JUSTICE

The voice of Sir Jasper McDivill, justice of the peace, was loud and dominant: in fact, admirably wedded to his appetite and convictions. He rode hard and, in his opinion, worked harder—this work being confined, however, to the little justices' court where he presided with the austerity of an avenging angel. Only at one time of the year was the great man genial, and that time was now fast approaching. Although most people, with reason, disliked him, as each festive season came round somehow he succeeded in making just enough acquaintances to tide him over the forthcoming twelve months.

Jeauvais was neither a chateau nor an estate, nor a province in France, but having a French name one would normally look for it in England. In 1805 Jeauvais was a small, but flourishing market town in southern England, set in truly rural surroundings which were studded and traced with woods, lanes and meadows. It was, strictly, but a village, save for the presence of Sir Jasper's residence nearby, which automatically raised it to township status. Today you would look in vain for such a pleasant place.

On this morning the squire, for so he was, arrived at the little courtroom and, alighting from his carriage, hailed the parish constable. "And a merry Christmas to you, Super." "Yer 'umble sarvant, me Lard," spoke the corpulent constable, for they could become so in those days.

Psychology may have been unknown, but it was not unpractised. The discerning justice knew the advantage of raising inferiors to dizzily superior rank; the policeman, a simple man, was equally adept in the technique. Then the aspirant to the nobility and the embryo superintendent walked into the building.

Inside, with pompous pride, Sir Jasper stopped and looked about him, as one surveying his domain. Then he walked solemnly to the garish, blood-red, towering structure, which was his chair. This chair appeared to rear itself above all else in the room, being fringed on either side by a trailing wooden framework, which had the appearance of two insignificant hills almost hidden at the foot of a mighty mountain. In each sober wooden fringe were two seats, and when the court was in session each seat was graced by one self-effacing local magistrate. There the little men sat and merely basked in the omnipotent radiance of Sir Jasper.

It was his custom to recline, scowling heavily upon the malefactor, for with him all were malefactors. But on this occasion the spirit of Christmas was seeping into him. As he sat he actually hummed a carol; at other times if he hummed at all it was a funeral dirge, or the nineteenth century equivalent of "The Last Round-up," for all to hear, perceive, dwell upon, and tremble.

The butcher, baker, apothecary and chandler of Jeauvais, having arrived severally and quietly, took their places. Each bowed humbly, and duly simpered, to that shining star in the wondrous legal firmament above them. Ordinarily he bowed back severely, but now he beamed and whispered, "A happy Christmas, gentlemen."

"Call upon the malefactor," thundered Sir Jasper, momentarily forgetful of the season. The startled clerk looked at the dock, which was empty, and at the Bench which was full, then peering into the dim recesses of the room, he piped in a high-pitched tone, "Timothy Stookes, stand forward." Timothy a tiny shrivelled being, with a long, thin face and beady black eyes, stood in the front. "The charge is stealing two turkeys—during last night, my Lord." "Two turkeys," repeated Sir Jasper, mouthing the words until his heavy lips grew moist with anticipation. "And where did the villain steal the birds, pray, Mr. Clerk?" "From the estate of your neighbour, Lord Larder, my Lord." "Oh! Ah! Aye. He! He! Fancy that now . . . I see . . . Why, my man . . . why . . . did you do it?" The justice asked in a voice which savoured strangely of curiosity and not a little satisfaction. "Well . . . I'm waiting." "I weren't wull," spoke the shrivelled little man, in a voice that would have been appropriate to Goliath himself, "and I thought a but a turkey'd do me gude."

McDivill surveyed him, a twinkle in his eye. "Where is the owner of these allegedly stolen birds, Mr. Clerk?" "Lord Larder," called the clerk, and his Lordship came to the witness box. "Sir," ejaculated Sir Jasper in a voice overbearing and ponderous; studiously refusing the use of the title which was his Lordship's by right. "Sir," replied the nobleman, delicately and precisely, scornful to address the justice by a title which was not his. "How do you establish, sir, these turkeys are yours—and where are they by the way?" "I know one is mine, sir," returned Lord Larder. "By its appearance, and also as my one and only turkey is missing from its pen." "Tush, tush, I know my bird, too," said the squire petulantly. The parish constable held aloft, as far as he was able, two great white birds. "What of the other?" jerked Sir Jasper. "That is not mine," spoke the nobleman softly. "But aren't all turkeys alike?" spat the justice. "Yes, and so are all children, but I know mine," tartly countered his lordship.

"What value do you give it, sir?" fumed Sir Jasper. "One crown, sir," replied Lord Larder. "Well, well, sir," pursued the squire, pulling his ear. "Well, well, Christmas comes but once a year. What shall I do with the poor man?" he asked. "Do with him, sir, do with him?" and his Lordship's words cut like a knife. "Do as if the turkey was your own. I am not



learned in the law, but you sir, are a lawyer . . . pure . . . and . . . simple." The comment was lost upon the heavy justice. "Very well, sir, I will do as you say, and am obliged to you. But first, Timothy, tell me, where did you get the second bird?" "Zame place, me Lard." "But the witness says he had only one bird." "Aint you got no turkey?" mumbled the man. "What do you say?" "Nothin' me Lard, 'twas two, I'm sartin zure."

"Well," began the justice, "it behoves us to exercise charity. I shall let him off, since you ask me to do as if the bird were mine. More, I will pay you your crown, sir. There, now your turkey is mine." "But, sir," hissed his Lordship, deliciously, although in high dudgeon. "I won't sell. Thieves should be punished, Christmas or not." "Sir," said the justice, "You doubtless wouldn't have had it stolen, but stolen it was, on your own testimony." "I," and the knight smote his breast, "have a single bird in my pen, but I look after it, sir, as you should have done." The nobleman sniffed, but so aristocratically as not to be noticed.

"Very well, as a loyal justice of our Sovereign Lord the King, I now decree that you be and are reimbursed for one turkey. I am the owner, and I give it to the poor and lowly man," here a swell of self-gratification, "who was forced, doubtless by circumstances, to steal; I sentence him to spend a merry Christmas with his family, on the charge of stealing two turkeys. Clerk, hand the prisoner a turkey and discharge him. The other bird, give it to the constable for the poor. Place this second crown into the poor-box in payment." A sweeping gesture from the justice invited the gallery to approve his magnanimity, which they did with applause. He smiled condescendingly, and bowed; his satellites giggled and nodded, as if they nicely estimated his talent and thoroughly deprecated the gallery's stupidity.

"Any other business, Mr. Clerk?" "Tom Bray," and the clerk beckoned forward a local lounge. "My Lord, charged with stealing cakes, fancies and trifles from a confectioner." "Ha! Ha! Ha!" pealed Sir Jasper. "What say you, fellow?" "Me Lard, I was a cortin'. There was Sally wi' 'er arms round me, in the shop doorway. A drap o' drink made me forgetful, an' thet's true, me Lard." "Silent leges inter arma—d'ye follow that, fellow?" "No, yer 'onour."

"Ha! Ha! Ha! Mr. Clerk, d'ye like my wit? Laws are inactive in the midst of arms. So, too, now I remember, the law takes no notice of trifles. I forget the Latin, Mr. Clerk." "It escapes me too, sir, for the moment," said the latter. "Aye, Aye, a marvellous time for escape, this is. Go, you jolly, carefree rascal—the very law is on your side—trifles—Ha! Ha! Ha!"

"That is all, Mr. Clerk. Good-day, and a happy Christmas to you all," and Sir Jasper swept from the room, walked majestically out to his carriage and was driven away.

Arriving at the Hall, as he alighted, he observed a handyman walking towards the back of the house, carrying a very plump turkey on his back. "Grabb, Grabb," shouted the knight, "My bird, have you got it ready for the cook?" "Me Lard, Ma'am bought this 'ere one vrum a man o' the village, a few minits 'go—man called Tim Stookes; I'm takin' en t' 'ospital."

At this moment precisely her ladyship crossed the lawn, "Oh! Jasper, a poor, poor man called; he had that bird for sale, and such a sorry tale to tell. It was all too, too sad. I bought it for two crowns and have promised it to the hospital and Grabb is taking it there. They are so full of humble thanks for your gift." "My gift?" said he. "Well, dear, you are Chairman there, aren't you? You must give them something."

With a tearing, splitting crash, a garden-boy burst through the hedge. "Me Lard, me Liddy, 'er be gone, 'er is. 'er was there but 'er aint; 'er was 'ere, but 'er baint." The lady's eyes pin-pointed, and her spouse bristled. "What's gone, boy," gasped the squire, in both irritation and alarm, "My Lady's jewels?" "No, me Lard, 'ers gone." "What . . . What's gone, boy . . . speak, speak, speak," and he shook the lad's shoulder to make him more explicit. "Vrum the pin, me Lard. He be stalled since last night 'er be. Th' turkey, I manes."

Lady McDivill shrieked, "Get the constable, search the cottages, stop the coaches, call the Militia, issue a warrant." But Sir Jasper expressed in silent wrath his calling down of vengeance upon the situation. Then he recovered, and lamely repeated, "Timothy Stookes, Timothy Stookes; I have given him my own bird, then bought it back at twice its price, and her Ladyship has given it away. He stole it from me and I sentenced him to spend a merry Christmas. But, but, it is Christmas."

## COULD DO BETTER

By CLAUDE E. BRIDGES

There is usually a catch in it somewhere. Looking back to our schooldays we can recall how, as the second half of the term advanced, the gleam of the Christmas "hols" gradually grew in brightness.

But, regretfully, its glamour was dimmed by the realization that our arrival home would be preceded, or soon followed, by the report on our term's work (if any). The thought that the cordiality of our reception might be mingled with an Arctic blast, or that our warm welcome into the bosom of the family, might in a few days, suffer a sudden drop in the domestic temperature rather damped down the possibility of our complete happiness.

I am writing, as no doubt you have wisely perceived, of those of us whose school life was distinguished—or should I say, undistinguished?—by a terminal oscillation among the middle places of our form. For our brilliant fellows who, seemingly without effort, always came top, I have nothing to say,

I can only imagine how glorious a progress their home-coming must have been, how free from fear they were of any diminution in the enthusiasm of their home-coming welcome, and how proud were their parents in their anticipation of the glittering careers that awaited their fact-sodden sons.

The passage of years has, however, mellowed these sinful feelings of schoolboy envy, for very few of those bright lads it seems have carved out for themselves niches of any lasting value.

Reflecting upon the days when I was in the fifth form at St. Nemo's and looking at those of us whom I know of today, I rejoice to say that the best jobs in life are being done by the "could do better group" in the middle of the form.

Thank goodness that filthy swot Hodgkins-Brewer (we always called him "Bass") who never left the top place for a second, who got a first in Greats and then wrote books that nobody read has come to his merited end, for I believe—and hope—he finally died of starvation.

On the other hand old "Wiggy" Redgrave, the school's prize idler, had the right idea, for he still regards the day he left school as something superior to "VE" and "VJ" day in the liberation catalogue. He immediately plunged into business with such a splash that now he is paying more in surtax than the top half-dozen of his form have collectively earned since they put on their M.A. hoods and gowns.

This craving for high positions in the school form list is both useless and stupid. As one boy wisely said to his father when a nasty interview was taking place because the report showed that young Williamson had bagged bottom place in his form, "Well Dad," he said, "does it really matter? They teach the same at both ends of the form." How true!

But I cannot give my support to the commercial traveller father, who, before leaving for Paris on business (at any rate that was his story) said to his day-school son:

"John, go to your room."

John obeyed, followed by his father with cane in hand. When he had closed the door the following conversation took place.

"When does this term end?"

"Tomorrow, Dad."

"And when shall I get your report?"

"In about a week, I think, Dad."

"Right, as I shall be away for the next fortnight, and as I have no reason to suspect that you have done any better this term than in previous terms you can bend over and have your usual six—this time in advance."

That, of course was some time ago; but I'll warrant that by now young John has made his father look silly.

## FATHER CHRISTMAS IN THE DOCK

"Bless my soul," exclaimed the chairman, as the gaoler ushered into the dock a portly, white-haired gentleman, clad in a long red fur-edged coat and hood, and stout knee boots.

"What's this case?"

"Number one in your list, your worships, Santa Claus."

"Who?" queried the clerk.

"Santa Claus."

"Sounds foreign to me," observed the clerk, "does he understand English?"

"Yes, sir. He says that he speaks all languages and regularly visits every land."

"Where's his passport?" interjected the chairman.

"Hasn't got one, your worships."

"Ah!" said the chairman, sucking in his breath expressively, "Well, with a name like that, he's a foreigner all right."

"Looks like a Russian," observed the clerk, half under his breath.

"Don't be silly," replied the chairman, for he had heard the other half, "there's no snow on his boots. I'm more interested to know why he's toggled up in that garb."

"Well, it's hunting pink," said one of the chairman's colleagues, dubiously, who had an urbane mind. "Maybe he's wearing a special winter outfit."

"There are no foxes here," said the chairman irritably, showing that he, at any rate, did not have an urbane mind, "or maybe he thinks there are." He looked at the clerk pointedly, then, "What's the charge?"

I've been a schoolmaster, and so I know how difficult it is to get an original touch into a report. It's a shattering thought that for generations hundreds of schoolmasters have been giving thousands of reports on the same kind of little animals, with the same ineffectiveness. And now they even have reports in book form so they follow the poor pupil round like our Army record did. There is truly no escape.

Our congratulations, however, go out to the schoolmaster who, apparently determined to strike an original note in a report concluded with these words:

"James is a bright boy, but he spends too much of his time with the girls. I am doing my best to cure him."

The report was read by his mother who wrote thus to the master:

"Dear Mr. Domine,

"I have read your remarks about James and the girls and I am grateful to you for trying to cure him. If you manage to do this will you please let me know how you did it as I am having the same trouble with his father."

When we realize that school only provides scope for a limited range of mental and physical activities, we are grossly unjust to our spirited young friends by judging them only by the tricks they perform in the educational circus. And so when the tired and disillusioned form master winds up his tedious appraisal of Robinson major by saying that "he could do better," he is probably more true than he realizes. For when young "Robbie" gets the chance to do the things for which a bountiful Providence has given him the aptitude—but for which school gives no scope or has never heard of—he will probably demonstrate once more that there are better things in life than getting the prize for Greek verse. Knowing how to buy on a rising market or persuading a good looker with a nice wad of safe five percents to marry you, for instance.

The clerk, who had missed that one, hastily referred to the Charge Sheet. "Wandering abroad, lodging in the open air, and not giving a good account of himself. That, sir, is a charge under the Vagrancy Act, 1824, passed in the reign of George IV, when conditions in England . . ."

"No lectures inside the court, please," said the chairman, then in an aside to his colleagues, "have enough of them outside, eh?"

The clerk slumped in his seat, with a brooding expression on his face. He glared menacingly around the tittering court.

"Better give your evidence, constable." "I never think that a prisoner can plead to this charge," remarked the chairman sententiously to his colleagues, "seems absurd to me to ask a man if he has given a good account of himself."

The constable took the oath, and began, "At 2 a.m. on December 25, I was proceeding along Plumtree Avenue in the direction of the Punch Bowl public house, when I saw the prisoner fast asleep in the doorway of a house. I roused him, and asked who he was. He replied, 'Santa Claus, but most people call me Father Christmas.' I then asked him what he was doing at that hour of the morning. The prisoner replied that he was resting after a very busy round among the chimney pots—he pointed his finger upwards to the adjacent roofs, your worship."

"I asked him where he lived," he broke off to glare at the clerk, who was seeking to take the limelight away from him by handing an open volume of *Stone* to the chairman, then

continued, "and he said 'I have no fixed abode.' I thought . . ."

"Never mind what you thought," interrupted the clerk, fixing him with a beady eye, then observing that the officer was somewhat discomfited, leant back. Unfortunately, his head crushed against the open volume of *Stone* balanced somewhat precariously on the desk behind him. The weighty tome crashed down on the inkpot in front of him, ejecting some of its contents into his face.

"A rolling stone," observed the chairman jocularly. The clerk, however, did not see the point of this witticism, mainly because some ink had got into his eyes, and he mopped his face with a handkerchief.

"A good thing we don't have the colour bar in this country," the chairman mused, then, to the constable, "Proceed."

"I then noticed," the officer went on, "that he had beside him a large sack from which there protruded a toy trumpet and a goliwog."

"What is a goliwog?" interrupted the chairman in his best judicial manner.

The constable glanced at the clerk, and receiving no sign of discouragement (the clerk being not unversed in diplomatic guile) was apt to enter upon an explanation when he, too, thought better of it.

The chairman said, "Never mind, continue."

"I asked him what he had in his sack, and he replied, 'All sorts of go... things—Everything that can delight the heart of a child.' I told him to empty the sack, and, as he did so, out tumbled a wonderful assortment of gaily painted toys. All new, your worships," he added suggestively. (He had done a little plain-clothes duty in his time.)

"Don't be suggestive in this court—it isn't a music hall," barked the chairman, then, "So you realized he wasn't a chimney sweep—is that it?"

The constable swallowed hard, not liking to be taken out of his stride like this, then continued, "I asked him where he got them from, and he said he made them. I became even more suspicious, and asked him where he had made them if he had no fixed abode? He said that he had his workshop up there—again he pointed skywards. I asked where he sold them, and he replied that he never sold them, he always gave them away. I asked him if he had any toys anywhere else and he replied, with a hearty laugh, that he had sacks of them. I asked him where they were, and he pointed down the road, where I saw a strange vehicle without wheels, to which were attached a number of reindeer. I knew they were reindeer," he added with an apologetic air, "because I once took a correspondence course in zoology." He put that in because he knew one of the justices was a member of the standing joint committee—and thought it might help him sometime. "However, in the vehicle were several sacks full of toys, apples and oranges. I asked him what he was going to do with all the toys—when he replied he was going to give them away to all the children he could find. I asked him his purpose, and he said that, at this season of the year, all children, rich and poor alike, should be happy and make merry.

"I told the prisoner, your worships, that I was not satisfied with his explanation and would take him to the police station for further inquiries. He replied, 'Good, I have often wanted to visit a police station, and the court as well, to see whether I could introduce a little happiness into someone's life even there.'" (The officer paused—then added, it seemed by an after-thought) "Perhaps the clerk's." (The clerk hastily pencilled the officer's number on his blotting pad. "Always making cracks like that at my expense," he mused, "I'll see the Inspector about it,

after court.") "I took the prisoner with his vehicle to the police station. He was charged and cautioned and, when asked if he wished to say anything, replied, 'A merry Christmas to you all, gentlemen.' Perhaps a mental report, your worships?"

"That will do, constable," said the chairman severely. He was going to remain master of that court. He conferred for a few moments with his colleagues on the Bench—the central heating was not working properly, did not they think, and then swivelled round to the defendant.

"Now, Mr. Santa Claus" (he prided himself on being polite to everyone, except, of course, the clerk and police witnesses), "do you want to ask the constable any questions?"

The prisoner replied that he did not, but wished that one and all in the court might have a merry Christmas. Severely, the chairman told him that he was liable to three months—and he should not try to make fun out of the Bench. Did he wish to give his explanation, on oath or otherwise? The prisoner said he preferred to address the Bench from the dock.

"Your worships," he said, "I was just resting as the officer says. I had been very busy all Christmas Eve after the dear children had all been put to bed. There were more chimneys to go down this year than last, but I had not expected quite so many new homes to visit. I had to hurry on my rounds. You know," he added confidentially, "I am beginning to get old—and these days have to rest a while. Then the officer came up, and he has told you what happened after that. I do so hope that I have not missed any of the dear children through his bringing me here."

The chairman was clearly not impressed, and again he conferred with his colleagues. This time he was *certain* the central heating system was not functioning properly. Then he addressed the defendant:

"You find yourself here on a serious charge. A number of serious charges, in fact, and the court is inclined to regard offences of this kind in a most unfavourable light. You have a foreign name, yet no passport—and, by your own admission, you are also known by an alias. Illegal entry is a very serious thing—and probably you got here as a stowaway. Now as for your story—do you really expect us to believe you when you say you have been clambering down chimneys? If so, I would have thought your clothes would have been covered in soot. And if so, this would probably bring you within the scope of s. 25 of the Larceny Act, 1916. Now for the toys. According to you, you manufactured them yourself—you indicated to the constable skywards. Do you pay rates on your business premises? Have you received planning permission? Do you comply with the provisions of the Factory Acts? Have you, indeed, received a permit to make toys? Have you an exemption from purchase tax certificate from the Board of Trade? As to the oranges in your possession—did you obtain an import licence? What prompted you to park your vehicle in an unauthorized parking place? Was the vehicle licensed and insured? Altogether, this court is not impressed by your explanations. Seven years."

While the chairman was speaking thus, Santa Claus was wearing a benign expression, seemingly not understanding what was being said. As, however, he was about to say something, the chairman interrupted him.

"And one more thing—appearing in court in a garb like that! You should be ashamed of yourself for not showing more respect to the court." He paused for breath, then, "Disgraceful. I alter the sentence to eight years."

All eyes focused despairingly on the clerk; much to everyone's surprise, however, the clerk had not gone to sleep, but was only dozing. With a start he came to life. "Eight days, you mean?" he whispered urgently.

"Eight years," said the chairman firmly.

The clerk breathed heavily through his nose. "You can't do that," he said faintly.

"You always spoil everything," the chairman said irritably. "All right." He turned to the defendant once more. "On second thoughts, the court has decided to take a more lenient view of the matter. After all, it is the festive season—and I feel—or rather, the court feels—rather, the clerk says. No. Where was I? I forget, but anyway, it does not really matter. As I was saying, we have anxiously considered your case. What was he charged with once again?" he whispered to the clerk.

"Wandering abroad, lodging in the open air, and not giving a good account of himself," said the clerk resignedly.

"Ah yes," said the chairman. "Well, we find you have given a very good account of yourself. Besides," he added thoughtfully, suddenly remembering a point from the clerk's last lecture—and smiling grateful acknowledgments at the clerk, "you were not directed to a reasonably accessible place of shelter. You are therefore discharged, but next year, do, please, give yourself more time to do the job, and don't get caught napping again."

But the defendant, after the cold reception he had received, made a resolve never to return—which is why all the male parents in this country have to impersonate him in order to placate their expectant offsprings. The moral of this story appears to be, never look a gift reindeer in the mouth. P.J.H.

## THE RECONCILIATION

By A PROBATION OFFICER

*Miss Redeam, Probation Officer, Ansaive.*

20.11.50.

Dear Miss Redeam,

I have been consulted by a Mr. I. Winsom who has just moved into lodgings here. There has been some trouble between him and his wife who is still residing at the matrimonial home, "Il Nido," Paradise Street, Ansaive.

The dispute between them arose from a trivial matter. Mr. Winsom remarked at dinner that the custard was lumpy, whereupon his wife flew into a temper and told him to leave the house and never return. He would like to be reconciled to her, with our help, so perhaps you would be good enough to see Mrs. Winsom and ascertain her views about reconciliation. The husband is a decent sort of chap and I hope we can do something to help. I understand the wife is expecting a baby.

Kind regards,

Yours sincerely,

A. MEAR,

Male Probation Officer, Malined.

*Mr. Mear, Probation Officer, Malined.*

22.11.50.

Dear Mr. Mear,

I have now interviewed Mrs. Winsom as requested. There is a good chance of reconciliation being successful provided that the husband will apologise for the allegation which caused the quarrel. It would seem that he has not told you the whole story. At the meal in question Mrs. Winsom had prepared rhubarb and custard for what she calls "afters." Her husband tasted one spoonful and sneeringly commented: "This custard's as lumpy as the back of your young Billy's neck!"—the reference being to Mrs. Winsom's brother, who is a chronic sufferer from boils.

Mrs. Winsom strikes me as being a straightforward woman and a capable housewife. She is quite definite there were no lumps in the custard, and that she did not tell her husband to go.

Kind regards,

Yours sincerely,

I. REDEAM,

Female Probation Officer, Ansaive.

*Miss Redeam, Probation Officer, Ansaive.*

24.11.50.

Dear Miss Redeam,

I repudiate the suggestion that Mr. Winsom did not tell me the full story of the custard incident. I did not detail the actual conversation in my letter as I regarded it as unimportant, but as you seem to place great value on the exact words used I have

gone into the matter again with the husband. He admits making a jocular remark comparing the custard to Billy's neck, and was surprised when his wife flung at him: "If you don't like it, you know what you can do!" Being of a logical turn of mind he concluded that, as quite definitely he did not like the custard, his wife wanted him to get his meals elsewhere. Taking this a step further he assumed that, as the preparation of meals is part of a wife's duties, she wished to end the matrimonial contract, and he therefore left the house.

Yours sincerely,

A. MEAR.

*Mr. Mear, Probation Officer, Malined.*

26.11.50.

Dear Sir,

You seem to accept the logicity of Mr. Winsom's deductions, although it is obvious he is wilfully misinterpreting his wife's words in order to provide an excuse for leaving her. Once again the men are sticking together regardless of right or wrong. How you can describe a man who makes fun of the sufferings of a boil addict as "a decent sort of chap" passes my comprehension.

Yours faithfully,

I. REDEAM.

*Miss Redeam, Probation Officer, Ansaive.*

28.11.50.

Dear Madam,

Mrs. Winsom was very crafty in her use of words. She was careful not to employ the common phrase—no doubt well known to you—"if you don't like it you can lump it!"—but introduced a variant which threw the onus of interpretation on to her husband. How such a woman can be called "straightforward" is a mystery to me. And a "capable housewife" does not make lumpy custard.

A. MEAR.

*Mr. Mear, Probation Officer, Malined.*

1.12.50.

Sir,

To employ the phrase "if you don't like it you can lump it" in an argument about the consistency of custard would invite the obvious retort: "That's what you've done already!" Mrs. Winsom avoided using the phrase deliberately, for she did not wish to prolong the quarrel by giving her husband the opportunity to use witty (*sic*) repartee. I lack your acquaintance with phrases in the vernacular, but would have thought this was obvious to anyone but a half-wit.

I. REDEAM.

Miss Redeam, Probation Officer, Ansaive.

3.12.50.

Madam,

Only a half-wit would make lumpy custard. Merely by following the instructions on the packet carefully Mrs. Winsom could have ensured a smooth concoction free from lumps or blemishes.

A. MEAR.

U. R. Alott, Principal Probation Officer, Malined.

7.12.50.

Dear Alott,

I have been consulted by Miss Redeam of my department regarding some trouble which has arisen between her and Mr. Mear of your staff. The actual cause of the dispute is of a trivial nature—whether or not the directions on a packet of custard powder were carefully followed by a certain Mrs. Winsom.

I wonder if you would interview Mr. Mear at your convenience and let me have your views on how a reconciliation can best

be effected between these two workers for human happiness.

Kind regards,

Yours sincerely,

S. O. WATT.

Principal Probation Officer, Ansaive.

Mr. Mear, Probation Officer, Malined.

9.12.50.

Dear Sir,

I went to see Ursula at the week-end to see what she'd been telling the other probation lady at home about me, and we are now all right again and as thick as thieves, not really of course, as I have never yet been inside a court, touch wood. I have been looking after Urs. as she had a surprise for me, and I have had two goes at making custard. First time I made the paste as smooth as you know what, but still it came out lumpy. Second time I boiled it longer than the packet said to. There was no lumps that time, but it burnt. Urs. and I wishes to thank you and the probation lady for all that you has done for us.

Respectfully yours,

I. WINSOM

## CHRISTMAS (PROPER PREPARATION) ACT, 1950

An Act to provide for annual formulation of adequate schemes for conferment and reception of Christmas favours; to ensure that favours will be distributed in consonance with the moral and equitable entitlement of recipients, to prohibit irresponsible actions by donors; and for purposes connected with matters aforesaid.

Be it enacted in recollection of King Wenceslas by and with the advice of hordes mainly hopeful but temperate, and uncommon optimists, in this season assembled, as follows:

### PART I. ADMINISTRATION

1. The Minister for the purposes of this Act shall be the Minister of Yuletide Celebration and "the Minister" shall not be misconstrued as a misogynist where the context conveys that impression.

2. (1) A council to be known as "the council for securing that no indigent persons except relatives suffer," hereinafter nemonically referred to as "snipers" shall be constituted after consultation with associations representing donors above the age of twenty-six years and recipients below the age of sixteen years, leaving intervening age-groups to seek such advice and comfort as they may deem requisite from gallant and gentler members of the opposite sex respectively.

(2) Snipers will nominate two of their members to serve on every "committee of residents affording boiled shirts," hereinafter nemonically referred to as "crabs," constituted by election of members from not less than two or more than two hundred dwelling-places (including caravans and tents and box-rooms in which tenants can accommodate not fewer than three white mice nose down or tail up and *vice versa* as the mice may see fit) within a radius of one-half of a mile from a suitable meeting place bearing the description fox and duck, holly and berry, plough and harrow, mistle and toe, or of like refreshing import.

Provided (i) that in so far as the number of crabs exceeds that of snipers after co-optation to the latter of members bearing the same numerical proportion as the number of motor-cars on order bears to the number supplied during the next preceding year the Minister may by order co-optate crabs so that every crab shall include not less than one sniper in its membership.

(ii) That after consultation (by balloon, helicopter, rocket or other means likely to impress the romantic outlook of persons perpetually desirous of visiting the moon) with associations representing expectant nephews, nieces, cousins and grandchildren the Minister shall by order require snipers and crabs to give such notice of their meetings as he may deem desirable so that the aforesaid expectants may have and opportunity of participating in decisions with regard to the nature and value of donations or other forms of seasonal recognition.

### PART II. OPERATION

3. Expectants will write, telephone, call personally on foot or by any practicable means including ambulance if suffering from temporary physical incapacity, on all prospective donors during the seven days to the twentieth of December, make felicitous inquiries with respect to health, notably lumbago, gout, hammer-toe and septic tonsils, and express deep concern in place of customary flippant reaction to repetitive or tedious catalogues of misfortune.

4. (1) Prospective donors shall carefully assess the sincerity with which inquiries mentioned in the preceding section are made bearing in mind the extent and frequency of similar inquiries at other times of the year and in particular (a) will observe whether solicitations appear to be fundamental and spontaneous judged from continuity or otherwise of speech of the expectant yielding an impression of constant concern or ulterior and passing motive; (b) endeavour to determine the nature of the donation which may be in the mind of the expectant, that is to say, whether a durable memento of the donor is a remotely possible objective, or an article of personal use or adornment is probable, or finance is visualized for a project deemed adverse to cultural advancement such as purchase of recordings of comedians enjoying transitional popularity, musical instruments like bugles, harmonicas or euphoniums capable of great offence when practised upon in garage, cellar, roof-space or other place whence sound may emanate but the perpetrator will be inaccessible; and (c) whether expenditure which may be involved would be on a scale or of a character inimical to the chase of too much money after too few goods, or to the balance of trade



between soft and hard currencies implicit in any of the six preceding international conferences held at pleasant places of popular resort in this country or overseas, or be subversive of the principle that all slices of the national financial cake shall be equal in diminutive volume, anaemic appearance and tasteless content.

(2) Reports by prospective donors will be submitted in triplicate to the secretary of the crab in which the expectants are resident and the crab at its next meeting held as near as may be to the date when high water at London Bridge is at noon will take such reports into consideration and transmit two copies thereof with their observations to the secretary of snipers for the purpose of classifying them together with reports received from any other crabs necessary to make up ten million such reports (any above that aggregate number being acknowledged with regret and hope for better luck next year).

5. Upon return from snipers of reports classified in accordance with paragraph (a), (b) or (c) of subsection one of the preceding section each crab will thereupon take into account all the relevant circumstances and enter on each report the percentage of five pounds and of five shillings to be treated as the maximum and minimum sums respectively at or between which a donor may squirm or stick as he may think in a fit whether good, bad or apoplectic.

### PART III. GENERAL

6. Any expectant dissatisfied with the amount of a donation, nonconformity of a present in kind with extravagant aspiration,

or an expression of regret and hope for better luck next year, who organizes a rally of malcontents at the Albert Hall, indulges in lobbying or threatens never again to gladden the heart of a prospective donor by stimulating concern invoked by s. three of this Act, shall be disqualified from consideration at any time during an ensuing period of five years except if a communication conveying an intimation of reasonable understanding is made in writing to a potential donor.

7. A thanksgiving day shall be arranged by snipers on which all successful expectants ranged under the banners of their respective crabs will attend at a suitable stadium and hear the principal high sniper extol the virtues of pleasure derivable from the perfidious sublimation of true feeling, followed by march past of a saluting base to the music of "Heavy feet and light fingers."

8. This Act shall come into force if and only if on a referendum of those persons of doubtful intelligence who may read this enactment as far as this section, and who send their names, addresses and evidence of mental capacity to the secretary of snipers, a majority of not less than two-thirds of such persons state that in their opinion the administrative structure and operation of this Act would promote general well-being of people in an area not smaller than that envisaged in the resounding conclusion of especially airy speeches, namely, in all the countries of the world.

9. Notwithstanding any unfavourable interpretation which might be given to the provisions of this Act and for the purpose of obviating doubt the hope is hereby declared that everybody will have a happy Christmas and prosperous New Year.

## "B. T. B. T."

By CLAUDE E. BRIDGES

The professional man, the councillor and the member of any public body is now subjected to a flood of reports and circular letters from his town clerk or the secretary of the body of which he is a member, and none of these can he lightly dismiss lest it contains a piece of information of importance.

The town clerk or secretary, however, is quite alive to this state of affairs. If he is niggardly or reticent in the issue of duplicated material, a member may well wonder what he does to justify his emoluments. If on the other hand, he is lavish and prolific, he runs an equal risk of being suspected of "putting on an act" to justify his existence. Another case of Scylla and Charybdis.

What then is the remedy? Lord Moran in his "Anatomy of Courage" says—if I remember correctly—that a common characteristic of all great men is the faculty of selecting for their lieutenants men of outstanding ability. Another trait found especially in men of unusual capability is a willingness to delegate.

Herein then lies one answer to the problem. When the chairman, the managing director or other senior officer has had the wisdom to provide himself with a second line of able executives and has delegated to them the maximum of his powers and duties, he can also unload on them a goodly share of his reading, and leave them to bring to his notice only those items that must be for his chairmanly or directoral eye or ear.

Sometimes the load is shed (with apology to the Electricity Board) by attaching to the document a slip with the name—or initials—of those persons to whom are circulated literary scourges of this type. This savours of the famous civil service parlour game popularly known as "Passed to you." The harassed executive on whose desk the column of such documents has been rising, like the incoming tide, decides on Friday after-

noon to "polish them off" (which he does with satisfaction to himself and little benefit to his committee, or local authority) by scribbling his initials on the slip, and pushing them on to the next unfortunate on the list.

But none of these bolt-holes is available to the committee man. He can, of course, stroll into the chamber with an "open mind." This is an euphemism which could be more accurately described as with no mind at all. But there are attendant dangers. He may find that, not having prepared himself by reading the notes sent to him by a town clerk or secretary he is unable to follow the discussion. The chairman may, in an indiscreet moment, call upon him for his views and embarrassment may ensue.

No, for the councillor and the committee member there is no short cut. This is regrettable. But if encouragement were needed—which we believe is not the case—these words of Francis Bacon could be re-read:

"Read not to contradict and confute; nor to believe and take for granted; not to find talk and discourse; but to weigh and consider."

Although—to quote Bacon again—"reading maketh a full man,"—too much of it may amount to no less than mental forcible feeding until bursting point is reached. Then something must be done about it. And if everything else fails, it might be a good idea for him to place just one more tray on his desk, and label it "B.T.B.T." Into this, the wearied executive or other person persecuted with an overdose of circulated literature could hurl the papers which he has neither the strength, time nor inclination to read.

The first "B," of course, means "Burn" and the two "T's" are the initial letters of the words "the" and "Thing" respectively.

## A SUBURBAN CIRCUITEER

Your circuits and their scenery  
Find little envy here—  
I'm as happy as a sand-boy,  
A Suburban Circuiteer.

O the mountain breeze at Balham,  
O the salty Stratford air,  
O the braciness of Brentford  
And of Hendon-Super-Mare.

O the lovely vales of Croydon,  
O the charm of Woolwich Hoe,  
O the gracefulness of West Ham  
And the peacefulness of Bow.

O the lazy lakes of Lambeth  
O the pretty Putney Mall,  
O the freshness that is Finchley—  
O the Regent's Park Canal.

O the hills that harbour Hounslow,  
O the blow on Ilford Pier,  
And the lovely views of Wapping  
When the coast is fairly clear.

O the woods surrounding Willesden,  
O the Enfield I adore,  
O the sights you see at Shoreditch  
As you stroll along the shore.

O the joys of Acton Regis  
O for Southwark's sunny clime,  
O the Edmontonic waters,  
O for Wandsworth-under-Lyme.

O the Hammersmith attractions,  
And the Tottenham hotels,  
O the holidays at Hackney,  
O the healthy Camber Wells.

O the boats in Deptford Harbour  
O for Dartford's silver sand,  
O the Gothic air of Gravesend  
And the belles on Clapham Strand.

O the dreaming spires of Watford,  
O for Wealdstone by the Moor,  
O to Barnet for the bathing,  
And to Edgware for the cure.

O the fragrance that is Fulham,  
O the quiet of Earl's Court,  
O to Stepney for the skating  
And to Kew for winter sport.

O the Tudor touch in Tooting,  
O the lovely Chingford sky,  
O to greet the sun in Aldgate  
And the moon in Peckham Rye.

O the pleasant peaks of Poplar,  
O the owls in Kempton Park,  
O for Millwall in the Spring-time  
And for Limehouse after dark.

Your circuits and their scenery  
Find little envy here—  
I'm as happy as a sand-boy  
A Suburban Circuiteer.

O a nice suburban practice,  
O two thousand quid a year—  
You can keep your scenic circuits  
And I'll stick to my career.

J.P.C.

## WRITTEN IN DEFENCE OF THE CLERK'S DEPARTMENT

If departments get in trouble,  
Make of things an awful mess,  
Who is there to extricate them  
Turn defeat into success?  
Who will draft that careful letter  
Saying neither "No" nor "Yes"  
Indicating that the error's  
One for which there's no redress.  
Draws rebutters and demurrers  
Talks of tort and replevin  
Leaves you with the pleasant feeling  
That the Council's bound to win?  
Who's the Council's dollar earner  
Helping us to pay our way,  
Exports extracts from the archives  
To the good old U.S.A. !  
Do I speak of Health or Planning  
Or the Treasurer, you remark?  
There can only be one answer—  
The Department of the Clerk !

When some day in Council Chamber  
Questions come which need reply,  
See the Chairman of Committee  
Pause, unable to comply.  
See him turn to one beside him  
Hopes the answer *he'll* supply.  
See the official quite dumbfounded—  
Doesn't even have a try.  
Deathly silence in the meeting !  
Wretched Departmental Head !  
Wishes that the ground would open  
Or his Deputy there instead.  
Then a folded slip or paper  
Passes from the seats below  
And the Chairman of Committee  
Makes reply in accents slow.  
Answer that is deadly accurate  
Not just shooting in the dark  
Written—and no doubt you've guessed it  
By the Council's learned Clerk.

J.K.B.

## PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

**1.—Children and Young Persons—Parent ordered to give security under s. 55 (2) 1933 Act—Refusal to enter into recognizance—Steps to enforce order.**

On conviction of a juvenile for an offence, the court orders the parent to give security for the juvenile's good behaviour pursuant to the Children and Young Persons Act, 1933, s. 55 (2). The parent refuses to give security or to enter into a recognizance.

What steps, if any, do you consider can be taken by the juvenile court to compel him to give security? In particular, do you consider that the Summary Jurisdiction Act, 1879, s. 34 applies, or is this a matter relating to the "payment of money"? If s. 34 applies, should an order be drawn up and signed by the magistrates, and a minute of it served on the parent? J.H.

Answer.

Section 34 of the Summary Jurisdiction Act, 1879, does apply, and by virtue of s. 17 of the Summary Jurisdiction Act, 1848, a minute of order must be served on the defaulting parent before any warrant of commitment or distress can be issued.

**2.—Criminal Law—Daily record to be kept of certain actions—Greater number recorded.**

Under article 6 (b) of the Explosives in Coal Mines Order, 1934, S.R. & O. 1934, No. 6, it is necessary for a shot firer in a coal mine to keep a daily record in a book of the shots fired by him. A shot firer enters in his book that he has fired sixteen shots whereas he has only fired fourteen shots. It is suggested that he has complied with article 6 (b) and that proceedings should be under s. 28 (4) of the Coal Mines Act, 1911, for making a false statement in an entry in a book, etc. Whilst I agree that proceedings could be taken under s. 28 (4) of the Coal Mines Act, 1911, I shall be pleased to have your opinion as to whether he has complied with article 6 (b) of the Explosives in Coal Mines Order, 1934, in view of the wording which is "A shot firer shall keep a daily record in a book, etc., of the shots fired by him," and that he recorded sixteen shots whereas he had only fired fourteen shots. A.P.V.P.

Answer.

The requirement in article 6 (b) of the order is not as plain as it might be. That is to say, does a "daily record of the shots fired" mean a separate record of each shot, showing its position, the charge used, etc., or merely a count for the day? We incline to the latter meaning since otherwise the adjective "daily" would be superfluous. But, even so, we do not think a record which over-states the number on a particular day satisfies the order. The article occurs in a part of the order headed "special provisions," and relates only to "permitted explosives." Permitted explosives may be subjected to conditions, as to storage, etc., and it may be important for the mine owner or manager to know at a given moment how much of his stock of such an explosive has been used.

**3.—Diseases of Animal Acts, 1874 to 1937—Anthrax—Destruction of contaminated clothing—Whether compensation payable by local authority.**

The carcass of a cow brought into the borough was cut open in a knacker's yard and was then found to be infected with anthrax. The carcass was therefore burnt and, on the instructions of the medical officer of health, two men employed in the knacker's yard destroyed their clothing which had been splashed with blood from the infected carcass. Do you know of any authority which will enable my council to compensate these men for their loss of clothing? A.R.R.

Answer.

No. We do not find that the Acts or the Anthrax Order, 1938, S.R. & O. 1938, No. 204, give any warrant for such "instructions" by the medical officer of health. At the same time, the men would have been taking a grave responsibility if they had stood upon their rights and declined to obey the "instruction," and we think the council ought to compensate them. If the accounts are subject to district audit, we imagine sanction would be given. If not, there should be no difficulty in practice.

**4.—Housing Act, 1949—Advances on mortgage—Repayment by instalments.**

I shall be glad to know whether it is competent for a council, which has made an advance under s. 4 of the Housing Act, 1949, to accept a repayment of part of the principal sum advanced. On this point s. 1 (5) of the Small Dwellings Acquisition Act, 1899, specifically mentions that a borrower may repay "the whole of the outstanding

principal or any part thereof being £10 or multiples." Section 4 (3) (c) of the 1949 Act, however, merely states that the balance may be repaid on the usual quarter days after due notice of repayment. In view of the difference in the wording of the two Acts I am apprehensive as to whether objection could be taken if the council agreed to accept a part repayment of an advance made under the 1949 Act. In this connexion form H.L.4, published by Messrs. Shaw and Sons, Ltd., seems to suggest (para. 11) that the council can accept part repayment, although this form seems to conflict with the provisions of the 1949 Act in that the Act specifies repayment on a month's notice whereas the form refers to three months' notice. A.V.L.

Answer.

The sentence in your query which begins with the words: "Section 4 (3) (c) merely states . . ." is not quite correct. Section 4 (3) (c) after giving an option between two modes of repayment goes on to say that the deed shall contain two stipulations, the second of which is here in question. Upon the structure of the enactment, the better opinion seems to us to be that the whole balance (not a fraction) is what is repayable upon a month's notice. This would accord with the ordinary law of mortgage, from which the Act of 1899 makes an exception.

**5.—Landlord and Tenant—Landlord and Tenant (Rent Control) Act 1949, s. 11.**

Upon the expiration of an extension period, and the continued acceptance of rent by the lessor, is it your opinion that the contract of letting then in existence constitutes a contract which has not previously been referred to the tribunal? If so, is it necessary for the lessee to refer that contract to the tribunal together with an application under s. 11 in respect of any subsequent notice to quit? My own opinion is that the contract existing after the expiration of the extension period is simply a renewal of the contract that was previously referred to the tribunal, and is, therefore, not a new contract, so that when the lessee makes application again in respect of a sub-

Established in 1869

the career of the

**LONDON AND  
MANCHESTER**

**ASSURANCE COMPANY LIMITED**

has been a record of  
progress and service

Such a record could only have been achieved  
by the Company giving the highest satis-  
faction to its policy-holders.

The Company's Assets exceed £40,000,000,  
having doubled during the last 11 years.

CHIEF OFFICE

FINSBURY SQUARE, LONDON, E.C.2

sequent notice to quit there is no need for him to again refer that contract of letting. The second point concerns what date the tribunal is to extend on an application under s. 11. My opinion is that the date to be set aside for three months or by whatever period the tribunal grant, is the date the notice to quit is stated to have effect, but it has recently been argued that the date that should be more properly extended is the date the tribunal hear the application, by reason of para. (a) in s. 11 (2).

ANS.

An ex-tenant who holds over will, unless the former lessor treats him at once as a trespasser, acquire first the status of a tenant at sufferance, and then that of a tenant at will. Thereafter he may, if rent is paid and there is no express variation of the old terms, be held to be tenant on the terms of the old letting. But this "renovation," as Lord Mansfield called it, passing through different legal stages, is the creation of a new tenancy. This seems to us to be the effect of *Johnson v. St. Peter, Hereford* (1836) 4 Ad. & El. 520, and to be clearly expressed in (especially) Atkin, L.J.'s judgment in *Cole v. Kelly* (1920) 123 L.T. 105. The cases of *Ladies' Hosiery and Underwear Ltd. v. Parker* (1930) 142 L.T. 299, and *Covered Markets Ltd. v. Green* [1947] 2 All E.R. 140 lead to the same conclusion. It follows that for purposes of s. 11 of the Act of 1949 a reference of the old contract has no effect. Upon your second point, our opinion is that an extension should be expressed to run from the expiry of the extended interest, the provision mentioned being merely a transitional saving.

6.—*Magistrates—Previous convictions—Mentioning by police officer who has no personal knowledge of them—Correct method of strict proof.*

We shall be obliged by your opinion with authorities if possible on the following:

The writer was in a court where after the defendant had been found guilty the police superintendent entered the witness box and after taking oath read a list of previous convictions against the defendant. Protest was made to the effect that none (or very few) of the convictions read out were personally known to the superintendent and in particular one conviction which had been made a short time before and which had been made at the other end of the country.

The chairman of the bench (who in fact is legally qualified) ruled that the evidence as to previous convictions was admissible in the form given; that if the defendant wished to contest any of them the case would be adjourned and the defendant could pay the expenses of the police in obtaining proper proof of the previous convictions. The chairman also said that there was a ruling or a case in the High Court to this effect.

The writer out of curiosity tried to trace such case or ruling but has been unable to do so. We shall be much obliged by your observations on the foregoing and particularly as to any ruling or case to the effect mentioned. Perhaps at the same time you would say what in your opinion is a proper method of proving previous convictions if the defendant refuses to admit them or if he expressly denies them.

ANS.

In *R. v. Van Pelz* [1943] 1 All E.R. 36 the question of statements by police, after conviction, about a defendant's antecedents and character was discussed by the Court of Criminal Appeal. We think it is implicit in the judgment of Viscount Caldecote, L.C.J., that the officer mentioning previous convictions may be relying on official records and not on personal knowledge.

We think that mentioning previous convictions in the way referred to by our correspondent is unobjectionable unless the statute in question imposes some higher penalty or disqualification for a second or subsequent offence. In that case the former conviction relied upon should be strictly proved. (See also 111 J.P.N. 604 P.P. 9.)

To prove a conviction strictly two things are required—documentary evidence from the records of the convicting court setting out precisely the conviction, and oral evidence of the identity of the defendant with the person referred to in that documentary evidence. Convictions recorded in the Criminal Record Office at New Scotland Yard may be proved alternatively as set out in the Criminal Justice Act, 1948, s. 39.

7.—*Public Health (London) Act, 1936, ss. 108 and 109—Defective sink.*

It is desired to take action in respect of a defective sink in the kitchen of premises within the borough and notices have been served upon the owners of the premises pursuant to s. 109 (2) of the above Act. The necessary works have not been put in hand and I have been instructed to take action to enforce the requirements of the notice. The following points occur to me:

1. The sink in question is installed purely for the purpose of a domestic facility, i.e., to clean and wash up, etc., and I do not think it can be said to fall within the definition of a sanitary convenience for the purposes of the above Act.

2. I am of the opinion that having regard to the use of the word "other" after the words "pipe or" in s. 108 (1), s. 109 (1), *et seq.*, and s. 109 (2), and to the use of the word "such" after the words "destroys any" in s. 109 (1) (d), the only possible construction of the above sections is to give the council power to deal with sinks, etc., when they are connected with sanitary conveniences, ashpits, or cesspools and not otherwise.

3. The fact that s. 109 (3) refers only to sanitary conveniences, ashpits, or cesspools does, I think, confirm my view.

4. Moreover, while there exist statutory provisions requiring the provision of sanitary conveniences, ashpits, etc., I am not aware of any similar enactment requiring the provision of sinks for domestic purposes.

On the other hand, while it is easy to imagine a water supply, trap, syphon, or pipe, connected with a sanitary convenience, ashpit, or cesspool, it is not so easy to contemplate a sink connected therewith.

Accordingly, I shall be obliged if you will let me know whether you agree with my view or whether you consider that sinks, etc., may be dealt with generally under these sections upon the assumption that they form items independent of sanitary conveniences, ashpits, or cesspools.

In the event of your agreeing with my view, apart from the provisions of the above Act which deal with nuisances which may be dealt with summarily do you consider that there are any other provisions of the Act whereby the condition of the sink in question can be dealt with.

EVEL.

ANS.

We can imagine a scullery sink connected to a cesspool: in fact this is common where cesspools exist, but we do not think this helps. An ordinary sink is not a sanitary convenience as defined in the Act. Grammatically, the sinks mentioned in these sections must be connected with sanitary conveniences (ashpits) or cesspools, as is even plainer upon looking at s. 109 where the words are "other connected work." The sinks must therefore, it seems, be slop sinks, not scullery sinks. A defective scullery sink must apparently be dealt with under the nuisance sections. We may add that the Act of 1936 was pure consolidation, and we have therefore looked up the Public Health (London) Act, 1891, in case any different arrangement of the language gave a clue to the meaning. The language has, however, been reproduced without relevant change in the Act of 1936.

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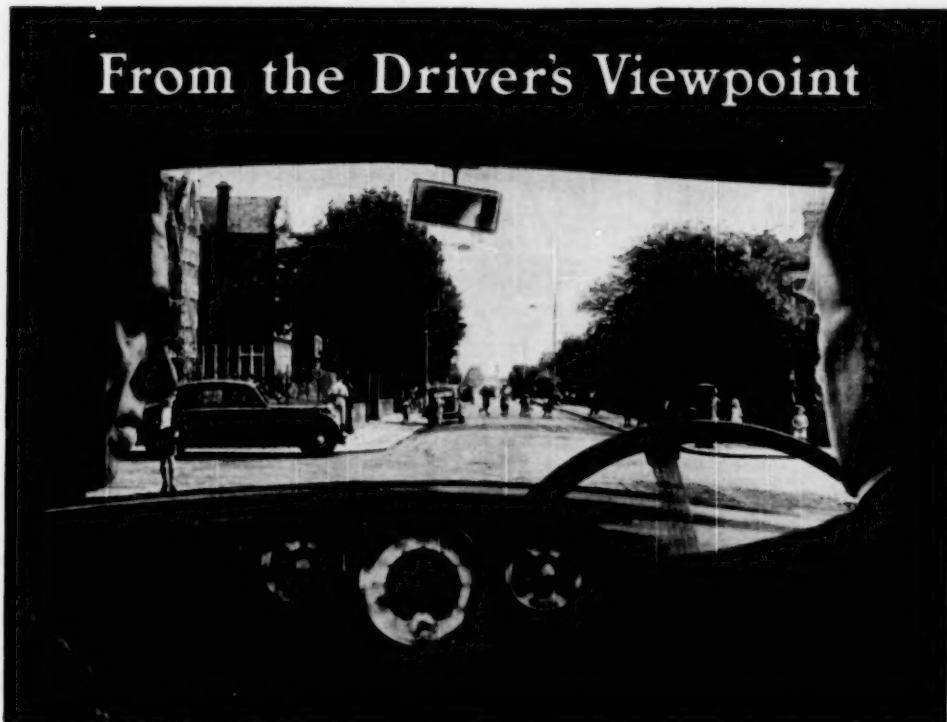
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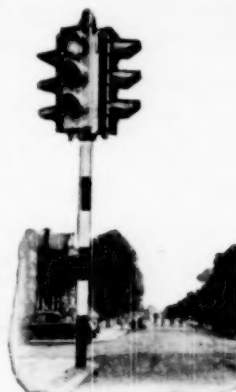
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